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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. [REDACTED] 709

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

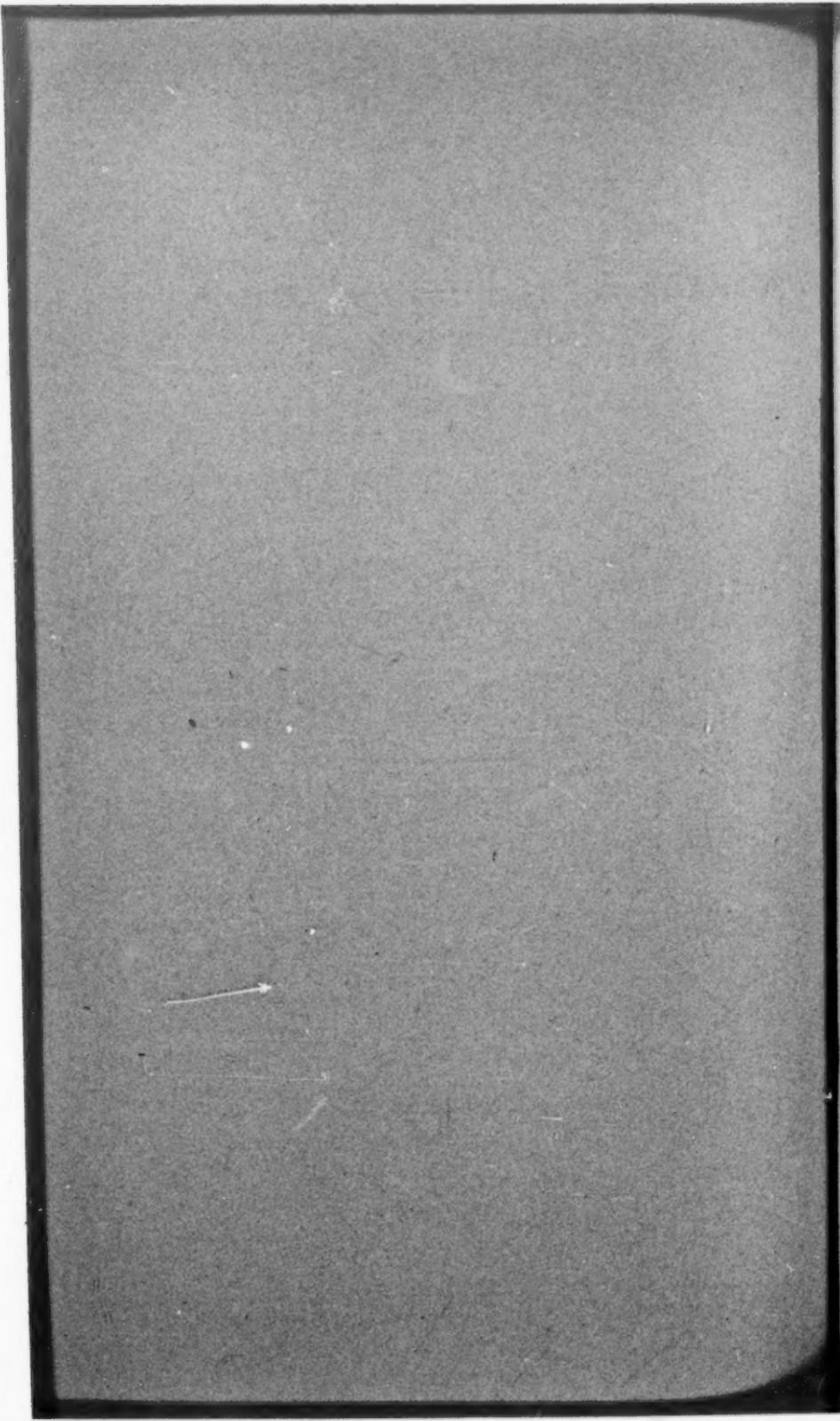
vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN, ET AL., CONSTITUTING THE STATE DISPENSARY COMMISSION, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED DECEMBER 7, 1912.

(23,448)



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WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN, ET AL., CONSTITUTING THE STATE DISPENSARY COMMISSION, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

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1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910.

In the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
vs.W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY
Patton, and J. S. Brice, Constituting the State Dispensary Com-
mission; J. Fraser Lyon, Attorney-General of the State of South
Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Ander-
son, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree,
and Chas. G. Wilson, Constituting the Firm of Anderson, Felder,
Rountree & Wilson, Defendants.*Order to Show Cause.*Upon reading the annexed verified complaint and affidavits sub-
mitted by plaintiff,It is ordered, That the defendants, and each of them, do show
cause, if any they can, before the Supreme Court of the State of
South Carolina, in its court room in the Capitol building, in the
City of Columbia, County of Richland, and State of South Car-
olina, at 10 o'clock in the forenoon, on the 25th day of April,
2 A. D. 1910, or as soon thereafter as counsel can be heard,
why the perpetual injunction and other and further relief
prayed for in the annexed complaint should not be granted.And it is further ordered, That a copy of this order and of the
attached verified complaint and affidavits be served with due dis-
patch upon each of the defendants.

(Signed)

C. A. WODDS,
Associate Justice.

Marion, S. C., March 5th, 1910.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

CAROLINA GLASS COMPANY, Plaintiff,
vs.W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY
Patton, and J. S. Brice, Constituting the State Dispensary Com-
mission; J. Fraser Lyon, Attorney-General of the State of South
Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Ander-
son, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree,
and Chas. G. Wilson, Constituting the Firm of Anderson, Felder,
Rountree & Wilson, Defendants.*Complaint.*The plaintiff, complaining of the above named defendants, alleges:
1. That the plaintiff is, and was at the times hereinafter stated, a

corporation duly chartered and organized under the laws of the State of South Carolina, having its principal place of business at Columbia in said State.

3 2. That the defendants, W. J. Murray, as Chairman, and John McSween, A. N. Wood, Avery Patton and J. S. Brice, constitute the State Dispensary Commission, having been duly appointed by the Governor of the State of South Carolina under an Act entitled "An Act to amend an Act entitled 'An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs,' so as to provide compensation for members of the said Commission for the year 1908, and to provide for the sale of the real estate heretofore used in conducting the Dispensary, and to further provide for winding up the affairs of the State Dispensary," approved the 24th day of February, 1908; and the defendant J. Fraser Lyon is the duly elected and qualified Attorney-General of the State of South Carolina and, as such, is acting as legal adviser of the said State Dispensary Commission; and the defendants W. F. Stevenson, B. L. Abney and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree and Chas. G. Wilson, constituting the firm of Anderson, Felder, Rountree & Wilson, have been employed as special counsel by the defendant State Dispensary Commission.

3. That the plaintiff for a number of years has been, and still is, the owner of real estate situate in the City of Columbia, in the County of Richland, State aforesaid, of considerable value, and has been, and still is, engaged in the business of manufacturing and selling glass bottles, demi-johns, etc., suitable for the use of the State and County Dispensaries.

4. That for several years prior to the year 1906, this plaintiff sold and delivered under regular contracts to the State Dispensary glass bottles, demi-johns, etc.; and during the year 1906 and in the early part of the year 1907, under contracts made with the Board of Directors of the State Dispensary, sold and delivered to it bottles, demi-johns, etc., of the value of ninety-nine thousand one hundred

4 and eight dollars (\$99,108.00), according to the special bids then and there entered into, all previous contracts of the said State Dispensary having been cancelled by a Joint Resolution of the General Assembly of the State of South Carolina at its session of 1906, upon which there was a balance due to this plaintiff of twenty-three thousand and thirteen and 75/100 dollars (\$23,013.75), which is still due and unpaid.

5. That the said State Dispensary Commission having been organized and proceeding under the Act approved the 24th day of February, 1908, this plaintiff filed with the said State Dispensary Commission a statement of its claim of twenty-three thousand and thirteen and 75/100 dollars (\$23,013.75) and offered evidence to show the validity and justice of the same.

6. That thereafter, to wit, on the 17th day of November, 1909, the said State Dispensary Commission filed its finding or judgment upon the said claim, which, after reciting certain proceedings, proceeded as follows, to wit:

"The Commission finds that the total amount of sales, after making all proper corrections therein, made by the Carolina Glass Company during the entire period of the transactions with the State Dispensary up to the time it was abolished, was \$613,437. Of this amount the sum of \$99,108.00 was for goods sold during the year 1906 and the short period during 1907 during which that Dispensary was conducted, so that the total sales made by the Carolina Glass Company during the years preceding the year 1906 aggregated \$514,329.90.

"The Commission finds that beginning early in the year 1906, as the result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina and the resolutions adopted by the General Assembly relating especially to the contracts with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did

5 lower its bids to prices which during that year and the short

period of 1907 during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906 the overcharges made in excess of the fair and reasonable market price for the goods sold was \$51,432.99, which should be and is hereby offset against the claim in favor of said Carolina Glass Company, to-wit: its claim for \$23,013.75, which, being deducted from the amount of said overcharges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of \$28,419.24.

"Whereupon judgment is rendered in accordance with the foregoing findings.

"Signed this November 17th, 1909.

"W. J. MURRAY.—No.

"JOHN McSWEEN.—No.

"A. N. WOOD.

"AVERY PATTON.

"J. S. BRICE."

7. That this plaintiff submits that no question of the right of the State of South Carolina against said plaintiff on account of transactions prior to 1906, by offset, counter-claim or otherwise, was before the said State Dispensary Commission by any notice or other pleading of any character, and that the said Commission, being a Court whose jurisdiction was limited to the consideration of and passing upon claims made against the State of South Carolina on account of the State Dispensary, had no power to consider the supposed claim of the State of South Carolina against the claimant on account of transactions which had occurred prior to the year 1906; and this plaintiff, conceiving itself wronged by the unjust and unwarranted finding of the said State Dispensary Commission and its

6 action in finding and offsetting the said fifty-one thousand four hundred and thirty-two and 99/100 dollars (\$51,432.99) against its just and valid claim of twenty-three thousand and thirteen and 75/100 dollars (\$23,013.75) found by the said State Dispensary Commission to be due to the plaintiff, gave due notice of

appeal to the Supreme Court under the provisions of Sec. 11 of the Act above referred to, and is now prosecuting its proceedings for said appeal.

8. That this plaintiff since the organization of the County Dispensaries has been selling to certain of them bottles for their use, and on or about the 20th day of November, 1909, had orders for the prompt shipment of such bottles to the County Dispensary for the County of Richland, and to the County Dispensary for the County of Aiken, and others; and on or about said date, learning through the newspapers of the State of South Carolina that his Excellency, the Governor of the State, at the instance and request of the State Dispensary Commission, had issued orders to the Dispensary Auditor and to the County Dispensary directing them to withhold the amounts that might be due by the said County Dispensaries to certain persons and corporations, this plaintiff caused its attorneys, Messrs. John T. Seibels and Wm. H. Lyles, on its behalf to approach his Excellency, the Governor, and Hon. J. Fraser Lyon, Attorney-General of the State of South Carolina, and to state to them the condition of affairs with reference to such orders, and that plaintiff's said counsel were referred by the Governor and the Attorney-General to the Defendant W. F. Stevenson, who was said to have charge of the matter in question. And thereupon, on said 20th day of November, 1909, one of plaintiff's counsel, Mr. Wm. H. Lyles, called up the said Defendant W. F. Stevenson, then at Cheraw, in the State

7 of South Carolina, over the long-distance telephone, and stated to him, in substance, the conversations which had occurred

between him and Mr. John T. Seibels on the one side, and the Governor and Attorney-General on the other, and was informed by the said Defendant W. F. Stevenson that no action would be taken to interfere with or hold up the amounts that might become due to the plaintiff on account of goods that might be sold or shipped to the said County Dispensaries on or after the said 20th day of November, 1909; and being requested by the said Wm. H. Lyles to give him such statement in writing, the said Defendant W. F. Stevenson, on the said 20th day of November, 1909, wrote to plaintiff's said attorney a letter, as follows, to-wit:

"Stevenson & Matheson,
"Attorney at Law.

"CHERAW, S. C., Nov. 20, '09.

"Mr. Wm. H. Lyles, Att'y, Columbia, S. C.

"MY DEAR SIR: Representing the interests concerned in collecting the back debts of the State Dispensary for overcharges, I will say that as far as shipments and deliveries to be made to the County Dispensaries are concerned, I will not ask that the money be held so as in any way to interfere with the money coming for any shipments made today or hereafter, until further notice. It being the intent of this letter to enable the Glass Co. to do business without interference from us in that way, from this time until such time as we may decide to change our policy. If we decide to change our

policy as to that, we will give you timely notice, and it will affect no shipments made in the meanwhile. The company being a resident corporation, we haven't the difficulty as to jurisdiction which
8 we have in other cases. I will confer with you as to the accounts due the company as soon as I have reached a determination as to them.

"Yours most truly,
(Signed)

W. F. STEVENSON.

"cc. to T. B. Felder, B. L. Abney and J. Fraser Lyon."

9. That in pursuance of the agreement and understanding so arrived at, and relying implicitly thereon, this plaintiff continued to sell to, and ship to, certain of the said County Dispensaries goods needed for their purposes without ever having received any notice or any intimation from the said defendants, or any one else, that the understanding and agreement so reached would be terminated or violated, until on the 26th day of February, 1910, there were due to this plaintiff the following sums from the following named County Dispensaries on account of goods so sold and shipped after the said 20th day of November, 1909, to-wit:

From the County Dispensary for the County of Richland.	\$4,963.13
From the County Dispensary for the County of George- town	660.68
From the County Dispensary for the County of Aiken...	705.41
From the County Dispensary for the County of Beaufort.	26.70

Aggregating the sum of..... \$6,355.92

when, to plaintiff's great astonishment, it was informed that the following notice, to-wit:

9 "STATE OF SOUTH CAROLINA,
"Richland County:

"THE STATE
vs.
"CAROLINA GLASS CO.

"Notice is hereby given to all whom it may concern, that the above stated cause has been instituted, and is now pending before the State Dispensary Commission for the recovery against the Carolina Glass Co. of \$29,000.00, the amount which has been found to be due from the said defendant to the State of South Carolina owing to overcharges made by the said defendant in selling goods to the late State Dispensary, and this notice is given in accordance with the terms of an Act of the Legislature passed in February, 1910, and duly approved by the Governor.

"(Signed)

J. FRASER LYON,
Attorney-General.

"B. L. ABNEY,
"ANDERSON, FELDER, ROUNTREE & WILSON,
"Of Counsel,"

had been filed in the office of the Clerk of the Court of Common Pleas and General Sessions for the County of Richland, and recorded in the Book of Notices of the Pendency of Actions, and that such notice, or one similar thereto, had been served upon the Chairman of the Board of County Dispensaries for the County of Richland, and this plaintiff infers that a similar notice or notices have been served upon the County Dispensaries of the Counties of Georgetown, Aiken and Beaufort; and this plaintiff alleges that the said action was wholly without the authority of law, the said defendants claiming to proceed under the provisions of Section 7 of an Act entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved the — day of February, 1910, which this plaintiff alleges could not be construed to apply to any action

of the said State Dispensary Commission which had occurred
10 prior to the passage of the said Act, and, if so construed, that the same would be wholly unconstitutional, null and void, as in conflict with Sections 5 and 8 of Article I of the Constitution of the State of South Carolina, and in violation of Section 10, Article I of the Constitution of the United States, and also of the Fourteenth Amendment to the Constitution of the United States.

10. That the said defendants, undertaking to proceed under Section 6 of the Act approved in February, 1910, aforesaid, as this plaintiff is informed and believes, has served upon the County Dispensary of Richland a notice requiring said County Dispensary to pay over to the State Dispensary Commission the sum of money so due by said County Dispensary of Richland to the plaintiff on account of the above mentioned illegal offset found to be due by the said State Dispensary Commission against this plaintiff, and this plaintiff supposes that such notice and demand has been, or will be, made upon each of the County Dispensaries above named; which action this plaintiff alleges was wholly without authority of law, as the provisions of said Section 6 of the Act above referred to were unconstitutional, null and void, as constituting an effort, unwarrantably and without authority, to confiscate the property of the plaintiff without due process of law, the provisions of said Section being in violation of Sections 5 and 8 of Article I of the Constitution of the State of South Carolina, and in violation of Section 10, Article I, of the Constitution of the United States, and also of the Fourteenth Amendment of the Constitution of the United States; and, furthermore, in violation of the express contracts and agreements entered into by this plaintiff with the defendants above named as above alleged; and this plaintiff alleges that such action constitutes a cloud upon plaintiff's title to its real estate situate in the said County of Richland; in

11 the State aforesaid, and tends to hamper the plaintiff in the free and easy conduct of its business and to impair its credit and does irreparable injury to the plaintiff.

Wherefore, plaintiff demands judgment that the defendants, and each and every of them, be perpetually enjoined and restrained from allowing the notices aforesaid to be continued on file in the office of the Clerk of the Court of Common Pleas and General Sessions for the County of Richland, and from in any manner demanding or re-

ceiving the said sums, or any of them, alleged to be due by the several County Dispensaries above named to this plaintiff, or from in any manner interfering with the payment of any such sum or sums by the said County Dispensaries to this plaintiff, and for such other and further relief as to the Court may seem just, and for the costs of this action.

(Signed)
(Signed)
(Signed)

JOHN T. SEIBELS,
D. W. ROBINSON,
LYLES & LYLES,
Attorneys for Plaintiff.

STATE OF SOUTH CAROLINA,
Richland County:

Personally appears John J. Seibels, who, being duly sworn, says: That he is President of the Carolina Glass Company, plaintiff in the foregoing complaint, and that the foregoing complaint is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true; that the matters and things alleged in paragraphs One, Two, Three, Four, Five, Six and Seven are alleged upon deponent's own knowledge; that paragraph Eight is true of deponent's own knowledge, except as to the allegations with reference to the interviews between plaintiff's counsel, John T. Seibels and Wm. H. Lyles, and his Excellency, the Governor, and Hon. J. Fraser Lyon, Attorney-General,
12 and the conversation with the Defendant W. F. Stevenson, as to which this deponent is informed and believes it to be true; that the allegations contained in paragraph Nine are made upon deponent's own knowledge, except the allegation that said action was wholly without the authority of law and in violation of the provisions of the State and Federal Constitutions, which allegation he is advised and believes to be true; that the allegations contained in paragraph Ten of the complaint are made upon advice received from plaintiff's counsel and deponent believes the same to be true; and that this verification is made by deponent because plaintiff is a corporation and deponent is its President.

(Signed)

JOHN J. SEIBELS.

Sworn to before me this 4th day of March, 1910.

(Signed)

W. G. BATEMAN, [L. s.]
Notary Public for S. C.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

CAROLINA GLASS COMPANY, Plaintiff,

vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Constituting the State Dispensary Commission; J. FRASER LYON, Attorney-General of the State of South Carolina; W. F. STEVENSON, B. L. ABNEY, and CLIFFORD L. ANDERSON, JAMES L. ANDERSON, THOS. B. FELDER, JR., DAN'L W. ROUNTREE, and CHAS. G. WILSON, Constituting the Firm of ANDERSON, FELDER, ROUNTREE & WILSON, Defendants.

13 STATE OF SOUTH CAROLINA,
Richland County:

Personally appears Wm. H. Lyles, who, being duly sworn, says: That on or about the 20th day of November, 1909, this deponent was one of the attorneys representing the Carolina Glass Company, plaintiff above named, in the matter of its claim against the State of South Carolina on account of the affairs of the State Dispensary; that deponent on said day, in company with Mr. John T. Seibels, at the instance and request of the President of said company, called upon his Excellency, the Governor, and upon Hon. J. Fraser Lyon, Attorney-General of the State of South Carolina, and stated to each of them, separately, that the said Carolina Glass Company was selling bottles to certain of the County Dispensaries; that said company had seen the notice in the morning papers about the orders issued by his Excellency, the Governor, to the County Dispensaries to withhold payment of claims to certain liquor houses, and that the company wished to know whether such orders were to be issued as to the Carolina Glass Company, as, if they were, it would of necessity have to refuse to fill further orders or make further shipments upon orders already received; that deponent and said John T. Seibels were informed by each of said parties that Mr. W. F. Stevenson was the special counsel who was charged with such matters and they were referred to him; that deponent then called up Mr. Stevenson over the long-distance telephone and informed him with reference to the said matters, telling him that he was informed and believed that some of the County Dispensaries were in immediate need of bottles, but that the Carolina Glass Company could not afford to ship them if its claim was to be in any way tied up; that Mr. Stevenson then stated to deponent, in substance, what he subsequently embodied in his

letter dated November 20th, 1909, addressed to this deponent, 14 and which is now attached hereto; that deponent knows the signature thereof to be that of Mr. Stevenson, and upon receipt of this letter communicated its contents to Mr. Seibels, the President of the Carolina Glass Company, and advised him that it was perfectly safe to continue to make the deliveries of glass ordered by the several County Dispensaries, relying upon the promise made

in the 'phone conversation above referred to and restated in the said letter.

(Signed)

WM. H. LYLES.

Sworn to before me this 4th day of March, 1910.

(Signed)

W. T. AYCOCK, [L. S.]
Notary Public for S. C.

W. F. Stevenson, D. S. Matheson, Cheraw, S. C.

W. M. Stevenson, Bennettsville, S. C.

Stevenson & Matheson,
Attorneys at Law.

CHERAW, S. C., Nov. 20, '09.

Mr. Wm. H. Lyles, Att'y, Columbia, S. C.

MY DEAR SIR: Representing the interests concerned in collecting the back debts of the State Dispensary for over-charges, I will say that as far as shipments and deliveries to be made to the County Dispensaries are concerned, I will not ask that the money be held so as in any way to interfere with the money coming for any shipments made today or hereafter, until further notice. It being the intent of this letter to enable the Glass Co. to do business without interference from us in that way, from this time until such time as we may decide to change our policy. If we decide to change our policy as to that, we will give you timely notice, and it will affect no shipments made in the meanwhile. The company being a resident corporation, we haven't the difficulty as to jurisdiction which we have in other cases. I will confer with you as to the accounts now due the company as soon as I have reached a determination as to them.

Yours most truly,
(Signed)

W. F. STEVENSON.

cc to T. B. Felder, B. L. Abney and J. Fraser Lyon.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

CAROLINA GLASS COMPANY, Plaintiff,
vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and J. S. BRICE, Constituting the State Dispensary Commission; J. FRASER LYON, Attorney-General of the State of South Carolina; W. F. STEVENSON, B. L. ABNEY, and CLIFFORD L. ANDERSON, JAMES L. ANDERSON, THOS. B. FELDER, JR., DAN'L W. ROUNTREE, and CHAS. G. WILSON, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Personally appears John T. Seibels, who, being duly sworn, says: That he has read the affidavit of Wm. H. Lyles with reference to

conversations had between the said Wm. H. Lyles and deponent, on the one part, and his Excellency, the Governor, and Hon. J. Fraser Lyon, Attorney-General, on the other, on the 20th day of November, 1909, and knows that the statements therein made in reference thereto are true.

(Signed)

JOHN T. SEIBELS.

Sworn to before me this 4th day of March, 1910.

(Signed)

JOHN T. SEIBELS.

Notary Public for S. C.

16 STATE OF SOUTH CAROLINA:

In the Supreme Court.

CAROLINA GLASS COMPANY, Plaintiff,
vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Summons for Relief.

(Complaint Served.)

To the Defendants Above Named:

You, and each of you, are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at 1215 Washington Street, Columbia, S. C., within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief demanded in the complaint.

Dated at Columbia, S. C., March 4, 1910.

(Signed)

JOHN T. SEIBELS,

(Signed)

D. W. ROBINSON,

(Signed)

LYLES & LYLES,

Plaintiff's Attorneys.

17 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and J. S. BRICE, Constituting the State Dispensary Commission; J. FRASER LYON, Attorney-General of the State of South Carolina; W. F. STEVENSON, B. L. ABNEY, and CLIFFORD L. ANDERSON, JAMES L. ANDERSON, THOS. B. FELDER, JR., DANIEL W. ROUNTREE, and CHAS. G. WILSON, Constituting the Firm of ANDERSON, FELDER, ROUNTREE & WILSON, Defendants.

Return to Rule to Show Cause.

W. J. Murray, chairman, John McSween, A. N. Wood, Avery Patton and J. S. Brice, constituting the State Dispensary Commission, upon whom has been served a rule to show cause before the Supreme Court of the State of South Carolina why the perpetual injunction and other and further relief prayed for in the complaint annexed to said rule should not be granted, for cause and in answer to the said complaint show:

18

I.

They admit the allegations contained in paragraph one of said complaint.

II.

They admit that, as alleged in paragraph two of said complaint, they constitute the State Dispensary Commission, but allege that the said W. J. Murray, John McSween and Avery Patton were duly appointed by the Governor of the State of South Carolina as members of said Commission under an Act entitled "An Act to Provide for the Disposition of all Property Connected with the State Dispensary, and to Wind up its Affairs," approved the 16th of February, 1907 (25 Stats., 835), along with C. K. Henderson and B. F. Arthur, but that, on or about the — day of March, 1908, the said Henderson and Arthur resigned as members of said State Dispensary Commission, and their offices remained vacant until the — day of June, 1909, when such vacancies in the said Commission were filled by the appointment of A. N. Wood and J. S. Brice, and which was subsequent to the approval of the amendatory Act mentioned in said paragraph. These respondents admit that, in and by the provisions of said Acts of the General Assembly, the Attorney-General of the State for the time being is the duly authorized legal adviser of this Commission, but they deny that their co-respondents, W. F. Stevenson and B. L. Abney, have been employed by them as special counsel, except as hereinafter mentioned and admitted as to the claim of the plaintiff, but they do admit and allege that their co-respondents mentioned in

said paragraph, composing the firm of Anderson, Felder, Rountree & Wilson, are under special contract with this Commission, and engaged and employed by it to represent and defend, with the approval of the Attorney-General, the interests of the State in certain claims pending before it, among which is the claim of the plaintiff,
19 and that such employment of said firm is specially authorized by the provisions of the Act creating this Commission.

III.

They admit the allegations contained in paragraph three of said complaint.

IV.,

As to the allegations contained in paragraphs four, five, six, seven, eight, nine and ten of said complaint these respondents admit the same, except as they may be in conflict and inconsistent with what is in this paragraph hereinafter stated, and the statements and findings contained in the judgment of this Commission herein set forth.

These respondents allege that the said State Dispensary Commission, composed as hereinabove stated, did organize on the 19th day of February, 1907, electing W. J. Murray, one of these respondents, as chairman, and B. F. Arthur as secretary (who, as stated above, served until the — day of March, 1908, when he resigned), and proceeded in accordance with the provisions of said Act, in the performance of its duties in the investigation, examination, hearing and determination of the claims presented to and before it, among which was the claim of the plaintiff, which on the 24th day of February, 1907, presented and filed its claim for the sum of \$23,013.75, representing the same to be a balance due to it by the State of South Carolina on account of the sale and delivery of glass bottles, demijohns, etc., to the Board of Directors of the State Dispensary under awards made by the said Board in April, 1906, and subsequently thereto; that the said State Dispensary Commission, along with other claims, did regularly docket the same for hearing, and gave notice of its intention to proceed in conformity with the provisions of said Act in the disposition of said claim, and thereafter, on the

14th of February, 1908, the plaintiff did appear, by its duly
20 authorized officers and agents, before said Commission and proceed to introduce evidence in support of said claim; that on account of certain injunctions issued out of the Circuit Court of the United States for the District of South Carolina, the Commission was disabled by such proceeding and injunctions therein had from further hearing said case; that subsequently to the amendatory Act hereinbefore mentioned, and after the discharge of the said injunctions, this Commission, upon due and orderly notice in accordance with the provisions of said Acts and in conformity with its rules of conduct, regularly issued and made known to the plaintiff, did further hear evidence, make examinations and consider the same, on the 17th and 18th days of June, 1909, and divers other days, until this Commission, to wit, on the 17th day of November,

1909, did render and publish its findings and determination, judgment and decree, as follows:

"STATE OF SOUTH CAROLINA,
County of Richland:

In the Matter of the Claim of the Carolina Glass Company Against
the State Dispensary of South Carolina.

The foregoing matter having come on for a hearing before this Commission, and evidence having been taken for and against the claim made by said Carolina Glass Company against the State Dispensary, and after hearing the argument of the counsel representing said claimant and counsel representing the interests of the State:

This Commission, exercising its powers under and by virtue of an Act of the General Assembly of the State of South Carolina, approved February, 1907, and Acts amendatory thereto, find as follows:

First. That the Carolina Glass Company was organized during the summer of 1902, in pursuance of an agreement which had been made between its promoters and certain members of the
21 Board of Directors of the South Carolina State Dispensary, whereby it was intended that the said Carolina Glass Company should manufacture such glass as the Board of Directors of the State Dispensary might agree to purchase, and that awards for the purchase of glass to be used by said State Dispensary should be made exclusively to the Carolina Glass Company; and that said Board of Directors, or some of them, entered into a conspiracy to defraud the State of South Carolina by preventing and defeating all competition in the sale of glassware needed, used or purchased by the State Dispensary, and did in fact destroy all such competition.

Second. That in pursuance of this understanding and agreement the said Carolina Glass Company bid (in September, 1902) to furnish fifty ears of glass bottles at prices ranging about ten per cent. in excess of the prices that were then being paid by said State Dispensary to Flaceus & Company, with whom the State Dispensary then had a contract, a large part of which was still unfulfilled; and notwithstanding this fact, and the further fact that at the same time other bids were filed from other reputable houses at lower prices, said Board of Directors awarded the contract to said Carolina Glass Company at those prices; that on or about December 3, 1902, the said Carolina Glass Company entered into an agreement with said Flaceus & Company under and by virtue of which the Carolina Glass Company purchased the contract of said Flaceus & Company and agreed to assume its full and complete performance, and also by the terms of said contract purchased from said Flaceus & Company the special moulds needed to manufacture the special
22 bottles required under the rules of the Board of Directors of the State Dispensary and other material used in connection with their manufacture and packing; that the Board of

Directors of the State Dispensary thereupon ratified the transfer of this contract from Flaccus & Company to the Carolina Glass Company, and there was at the time the same was purchased twenty-two cars of glass still to be delivered under its terms; that thereafter said Carolina Glass Company did not deliver any glass whatever to the State Dispensary as being manufactured under the terms of the Flaccus contract, nor at the price named in the Flaccus contract, but continued to manufacture glass under the award which had been made to it under its bid filed in September, 1902, until in March, 1903, another award was made by said Board of Directors of the South Carolina Dispensary to said Carolina Glass Company at substantially the same prices, although at that time its own contract made in September, 1902, had not been fully executed and no part of the remaining cars of glass called for under the Flaccus contract had been manufactured or delivered, and notwithstanding the further fact that there were several bids made for the manufacture and delivery of glass under the terms and conditions imposed by the Board of Directors of the State Dispensary for much lower prices and for goods of just as good quality, the said bid of the Carolina Glass Company being then the highest bid made for the furnishing of glass with the exception of a bid by Flaccus & Company, which was a few cents higher than that of the Carolina Glass Company, and which the Commission finds was a dummy bid, not intended to be accepted, but made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass

Company that the former would not compete for business
23 with the State Dispensary, but would file this bid as a blind;
said Flaccus & Company having no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary.

Third. That for several quarterly periods following that of March, 1903, bids were invited for glass to be furnished to the State Dispensary, and other bidders filed bids besides the Carolina Glass Company, all of which were lower in price (though for goods equal in quality), than those proposed at the same time by the Carolina Glass Company, and that some of said bids were suppressed by said Board of Directors with the consent of the Carolina Glass Company so that no entry or record was made upon the books of said Board of Directors of the State Dispensary in regard thereto; that notwithstanding this, awards in each instance were made to the said Carolina Glass Company and purchases made from it at the higher prices named in their bids.

Fourth. That after December 3, 1902, and until the early part of the year 1906, when pursuant to a concurrent resolution of the Senate and House of Representatives of the State of South Carolina, the existing contract between the State Dispensary and the Carolina Glass Company, as to unfilled portions thereof, were canceled, the said Carolina Glass Company, by and with the aid and assistance of the Board of Directors of said State Dispensary and in furtherance of the conspiracy already formed to destroy and prevent all competition in the sale of glass to said Dispensary, secured and

maintained a complete monopoly of all the business in that commodity that was done with said State Dispensary; that after the year 1902, and during the remainder of the period above 24 named, said Carolina Glass Company, secure in the monopoly then created, raised its prices from time to time and were awarded contracts therefor, by said Board of Directors, said prices being at all times much above the fair market price for the goods sold. Said Board of Directors continuing at nearly every quarterly meeting to award new contracts to said Glass Company at those exorbitant prices, whether the goods were then needed or not, and notwithstanding that said Glass Company had never filed said Flaeceus contract until, at the time of the passage of the concurrent resolution by the two houses of the General Assembly of South Carolina in 1906, canceling the unfilled portions of existing contracts, there were outstanding contracts at exorbitant prices under which there remained to be filled orders for more than two hundred cars of glass bottles of the approximate value of more than \$200,000; by which action on the part of the General Assembly, according to the testimony of one of the officers of said Glass Company, the State saved more than \$50,000, when comparison is made with the prices paid for goods subsequently purchased.

Fifth. That said Carolina Glass Company sold goods of the same quality and size and general character as that sold to the State Dispensary in other States and in other parts of the State of South Carolina at prices which, making allowances for all credits properly to be given to said Carolina Glass Company for the different conditions under which those sales were made, averaged in prices from twenty to twenty-five per cent. below the prices at which the same goods were being sold to the State of South Carolina; the agent of 25 said Carolina Glass Company admitting in his evidence before the Commission that the purchase of the Flaeceus contract was made for the purpose of getting rid of a competitor, and that wherever his company sold goods in competition with others they met that competition by selling the goods at lower prices than the same were sold to the State of South Carolina.

We, therefore, find that the contracts made between the Carolina Glass Company and the Board of Directors of the State Dispensary were contrary to the laws of the State and against public policy, and for those reasons null and void, and that the said Carolina Glass Company should not, as a matter of strict law, be entitled to recover any sum of money from the State of South Carolina on account of said contracts, even if the State had no offsets against them whatsoever; but the Commission further finds that it should determine the matter on equitable principles and fix the matter of liability on a "quantum meruit" basis, and that the prices at which the Carolina Glass Company sold to the State Dispensary the glassware manufactured by it ranged throughout the entire period of their transactions with the State Dispensary, except for the years 1906, and 1907, at about ten per cent. above the fair and reasonable market price for said goods. The Commission finds that the total amount of sales, after making all proper corrections therein, made by the

Carolina Glass Company during the entire period of the transactions with the State Dispensary up to the time it was abolished, was \$613,437. Of this amount the sum of \$99,108 was for goods sold during the year 1906 and the short period during 1907, during which that Dispensary was conducted, so that the total sales made by the Carolina Glass Company during the years preceding year 1906 aggregated \$514,329.90.

26 The Commission finds that beginning early in the year 1906, as a result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina, and the resolutions adopted by the General Assembly relating especially to the contract with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did lower its bids to prices which during that year and the short period of 1907, during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906, the overcharges made in excess of the fair and reasonable market price for goods sold was \$51,432.99, which would be and is hereby offset against the claim in favor of said Carolina Glass Company, to wit, its claim for \$23,013.75, which being deducted from the amount of said overcharges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of \$28,419.24.

Whereupon, judgment is rendered in accordance with the foregoing findings.

Signed this November 17th, 1909.

W. J. MURRAY—No.
JOHN MCSWEEN—No.
A. N. WOOD.
AVERY PATTON.
J. S. BRICE."

That thereafter the plaintiff gave notice of appeal from the determination and judgment of the State Dispensary Commission upon certain exceptions made thereto, and that the said appeal is now pending in this Court.

27 That said Commissioner, having ascertained and found that certain of the persons, firms and corporations which had dealt with the State Dispensary were, by reason of such transactions and dealings, due to the State of South Carolina large sums of money, and that said persons, firms and corporations were claiming that, on account of certain sales of alcoholic liquors to County Dispensary Boards, the State of South Carolina was due by certain of these County Dispensary Boards therefor, and that the said County Dispensary Boards were in possession of funds arising from the conduct and operation of the Dispensaries in said counties applicable for the payment thereof, and were about to pay the same, and that such persons, firms and corporations had no other property or assets in this State to respond to the claims that were due to the State on account of the dealings had with the State Dispensary,

and that the same would be lost, unless the said Boards were prevented and enjoined from paying the same; this Commission did, on said November 17, 1909, pass the following resolution:

"Whereas, the firms of Thomas F. McNulty, John T. Barbee & Co., the Jack Cranston Company, S. Grabfelder & Co., Gallagher & Burton, Garrett & Co., J. W. Kelly & Co., William Lanahan & Son, Mallard Distilling Company, Meyer, Pitts & Co., Rosskam Gerstley & Co., Strauss, Pritz & Co., Bluthenthal and Bickart, Cook & Bernheimer Company and Friedman, Keiler & Co. owe the State large sums of money on overcharges made to the State Dispensary and the county dispensaries, owe them considerable sums of money and the Dispensary Auditor is being pressed to approve their accounts and allow them to be paid, as parties and corporations are non-residents of the State.

"Be it Resolved, That the said Auditor be requested and directed to hold up the payment of said sums for the benefit and behalf of the State, and not to allow any sums to be paid until the claims of the State be paid and settled."

28 But this Commission did not pass any resolution with reference to the said plaintiff, as will in said resolution appear, nor take any action with reference to the collection of what it had ascertained and found to be due the State by the said plaintiff on account of its dealings and transactions with the said State Dispensary; nor did this Commission make any direction or have any knowledge of the matters and things set forth in paragraph eight of said complaint, and that no such resolution, notice or action appears upon the minutes of its meetings, but these respondents have been informed and believe that at the time said Commission rendered its judgment in the case of the plaintiff on the 17th of November, 1909, the said plaintiff was due by the County Dispensary Boards as follows:

County Dispensary Board of Abbeville County.....	572.81
County Dispensary Board of Bamberg County.....	801.07
County Dispensary Board of Barnwell County.....	323.19
County Dispensary Board of Colleton County.....	470.38
County Dispensary Board of Fairfield County.....	1,562.89
County Dispensary Board of Georgetown County.....	44.51
County Dispensary Board of Kershaw County.....	926.92
County Dispensary Board of Laurens County.....	\$1,039.84
County Dispensary Board of Orangeburg County.....	1,399.51
County Dispensary Board of Richland County.....	3,363.21
County Dispensary Board of Sumter County.....	386.12
 Total	 \$10,890.45

which said amounts should, in equity and good conscience, and as a proper and legal application thereof, be returned and applied as a credit to the amount due the State, although not sufficient to have fully discharged what was ascertained and found to be due the State.

29 These respondents are further informed and believe that, notwithstanding the arrangement made and contained in the letter of their co-respondent, W. F. Stevenson, no interference would be made with money coming for any shipments made from the date of said letter until further notice, and that with regard to the amounts then due the company they (the attorneys) would confer together and reach a determination, the said plaintiff did, in violation thereof, withdraw, as appears from the allegations in paragraph nine of said complaint, \$4,534.53 from the amount that was due at the time the plaintiff claims the agreement was made with Mr. Stevenson, it now appearing that there is only due by the said County Dispensary Boards to the plaintiff the sum of \$6,355.92; and hence these respondents, upon information and belief, aver that, contrary to the allegations contained in said paragraphs, the plaintiff has violated the agreement contained in said letter itself, not their co-respondent, W. F. Stevenson.

V.

The General Assembly of the State of South Carolina at its last session passed an Act entitled "An Act to further provide for winding up the affairs of the State Dispensary," which was approved by the Governor on February 23, 1910; that in and by said Act the State Dispensary Commission was given certain authority and power therein set out, in addition to the powers theretofore conferred upon it; that this Commission, after having rendered its judgment on November 17, 1909, upon the claims and matters examined, investigated and heard, did, as stated above, take no action as a body or individually with regard to the enforcement of said finding or judgment except as hereinabove stated, but that, upon the approval of said Act it became their duty to convene and to carry into effect the provisions and requirements of said Act, and that they did 30 so convene on the 26th day of February, 1910, and proceed to the discharge of their duties under the last mentioned Act, as well — those heretofore mentioned and of force; that among the provisions of the Act of February 23, 1910 (a copy of which said Act is hereto attached and made a part of this return), the State Dispensary Commission was given authority to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations which had theretofore done business with the State Dispensary, and to pass all orders and judgments, and do any and all things necessary to carry out the purposes of said Act, and that all judgments rendered by them for any claim due the State should be a lien upon the property of the judgment debtor situated within this State, and the transcript of the said judgment should be filed in the office of the Clerk of the Court of Common Pleas in each county where any property of such judgment debtor is situated, and that in all cases pending before said State Dispensary Commission upon any claim or claims against any person or persons, or any corporation or corporations, owning any real estate in any count- in the State, the said Commission should file in the office of the Clerk of the Court in each county where such real estate is situated, a notice of the

pendency of such cases, and the said notice so filed should be full notice to all persons whomsoever claiming any title to or lien upon such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State should have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate in the hands of any person or persons whomsoever shall be liable for the payment of such debt so found to be due the State.

That the State of South Carolina having a claim against the plaintiff as aforesaid, this Commission did direct and authorize 31 the institution before it of an examination of the said claim, and that notice to the plaintiff should be given pursuant to the provisions of said Act, and that, in accordance with the terms of said Act hereinbefore referred to, the Attorney-General, with associate counsel, the said firm of Anderson, Felder, Rounfree & Wilson, being specially engaged as under its contract with the Commission it had full authority and right so to do, and the co-respondents, W. F. Stevenson and B. L. Abney, did file in the office of the Clerk of the Court of Common Pleas for Richland County the notice set out in paragraph nine of said complaint, which these respondents submit is in strict accord with section nine of the Act last hereinabove mentioned. These respondents are advised by their counsel that such notice has been filed in no other county than Richland, where they are informed the plaintiff owns certain real estate.

That at the same time this Commission, under the powers conferred by — and the directions therein contained, did, as alleged in paragraph ten of the complaint, cause to be served upon the County Dispensary Board of Richland County, a notice requiring said board to pay over to it the sum of money so due by the said County Dispensary Board of Richland County, which was due by it to the plaintiff; that the said plaintiff and its counsel had full knowledge or opportunity to know, and as respondents believe did know, of the said Act, while it was on its passage in the General Assembly, and these respondents aver that they knew the provisions of the same before its approval, and at the time said notice was filed in the office of the Clerk of the Court of Common Pleas for Richland County on the 26th of February, 1910, and that these respondents, as the State Dispensary Commission, were required to take such proceedings as they did take, and if they had not done so would have violated their duty and the law under which they were acting; that it was not the intention of the Commission or of its counsel to in any way violate

32 or affect the terms of the arrangement made by Mr. Stevenson, contained in his said letter, to stop or enjoin the payment by the County Dispensary Boards for the purchase of glass, &c., made subsequent to the 20th of November, 1909, but that it should affect and require the payment over to it of the amounts due by the said County Dispensary Boards to the plaintiff on account of purchases and sales made prior to the said 20th of November, 1909, and these respondents, as hereinabove stated, aver that they are not interfering with any such arrangement, but on the contrary the said

plaintiff has violated said arrangement and collected from the said County Dispensary Boards \$4,534.53 more than it should have collected under said arrangement.

And these respondents further aver and submit to the Court that, if it be found upon inquiry under the orders of this Court, that the respondents have, in fact, violated the agreement, and that there was not, as these respondents are informed and believe, due to the plaintiff the said sum of \$10,890.45, but a less sum, and that the notices and orders of this Commission, which it was obligated under the terms of said Act to make and give, have stopped or interfered with the payment of any amount whatsoever due to the plaintiff on account of purchases and sales made subsequent to November 20, 1909, and prior to the approval of said Act, they are desirous that the necessary and proper orders shall be passed by this Court, if the same can be done lawfully under the provisions of said Act, to the effect that the same may be adjusted in accordance with said agreement, and if it be found that the plaintiff has received from the said County Dispensary Boards in the aggregate more than it should have received, then that the plaintiff be required to refund or repay the same upon judgment being duly rendered and given against said

plaintiff in favor of the State of South Carolina for its claim, 33 or any part thereof, so as to maintain and protect the agree-

ment made by the attorneys, however much the same may not have been made under the direction or resolution of said Commission, but in accordance with law and the authority given to or possessed by the Attorney-General and his associates.

VI.

These respondents submit that the judgment rendered by them in the case before them on November 17, 1909, is in accord with, authorized and warranted by the Acts creating the Commission and amendatory thereof, and the conclusions therein found are fully justified and supported by the facts appearing in the judgment rendered by them, which said Acts of the General Assembly these respondents do aver are the proper exercise of legislative power by the General Assembly, and are not in conflict with, nor do they contravene, any of the provisions of the Constitutions of this State or of the United States; and if these respondents, in the performance of their duties and the carrying out of the provisions of said Acts, have affected the conduct of the plaintiff's business, it is not due to any improper, irregular or illegal proceeding upon their part, but the same arises and is due to the improper conduct of the plaintiff in its dealings and transactions with the said State Dispensary, as set out in the judgment of the Commission, hereinbefore referred to; that these respondents have, with impartiality, care and consideration, investigated, examined and determined the questions which have arisen before them in the claim presented by the plaintiff, and they deny each and every allegation contained in said complaint which has not been specifically admitted to be true, or which is in conflict with the allegations and averments made by these respondents herein.

34 Wherefore, they pray that the said rule issued and served upon them be discharged and the complaint herein dismissed.

ANDERSON, FELDER, ROUNTREE &

WILSON,

W. F. STEVENSON,

B. L. ABNEY,

Attorneys for Commission.

J. FRASER LYON,
Attorney General.

April 25, 1910.

STATE OF SOUTH CAROLINA,
County of Richland:

— — —, being duly sworn, deposes and says that he is — member of the State Dispensary Commission; that he has read the foregoing Return and Answer, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to them he believes it to be true. — — —.

Subscribed and sworn to before me, this — day of April, A. D., 1910.

— — —, [SEAL.]
Notary Public for South Carolina.

[Duly signed & sworn to.]

35 An Act to Further Provide for Winding Up the Affairs of the State Dispensary.

SECTION 1. Be it enacted by the General Assembly of the State of South Carolina: That the State Dispensary Commission is hereby authorized and empowered, in addition to the powers heretofore conferred upon it, to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations heretofore doing business with the State Dispensary, and to fully investigate transactions by any and all persons, firms or corporations with the State Dispensary, and to make settlement of all claims in favor of the State against any such persons, firms or corporations, and collect and receipt for the same.

SEC. 2. For the purpose of carrying out the provisions of this Act, the State Dispensary Commission shall have all the powers and privileges conferred upon it by any and all previous Acts and amendments thereto.

SEC. 3. Any finding of the State Dispensary Commission, under the provisions of this Act, shall be final, and upon such finding the Dispensary Auditor shall deduct the amount, or amounts, so found to be due and owing the State from any sum or sums that may be found to be due and owing by any county dispensary to any such person, firm or corporation found by the State Dispensary Commission to be indebted to the State, and each and every county dis-

pensary board and other officer in charge of county dispensary funds or assets arising from the sale of property belonging to a county dispensary, or dispensaries, shall, before paying any such person, firm or corporation so found to be owing the State, any sum or

36 sums of money whatsoever, turn over to the State Dispensary

Commission a sufficient sum of money, or so much as may be on hand, to pay the debt due the State, any balance remaining to be applicable to any just claim of such creditor against a county dispensary. A receipt of the State Dispensary Commission shall be a sufficient voucher for the payment of any funds found to be due the State.

SEC. 4. That the State Dispensary Commission is hereby authorized and empowered to order any officer, or officers, in charge or custody of any fund or funds arising from the sale of the assets of any former county dispensary, or of any assets belonging to any existing county dispensary, to withhold payment of the same until the further order of the State Dispensary Commission, and any and all officers and persons whomsoever are forbidden upon the order of the State Dispensary Commission to pay out any such fund until so permitted by the said Commission.

SEC. 5. In case any person, firm or corporation shall fail or refuse when required by the State Dispensary Commission to produce any book, paper, document or witness, or shall refuse to submit to the authority or jurisdiction of the said State Dispensary Commission, such person, firm or corporation shall be deemed to have abandoned its claim or claims against all county dispensaries, and the amount of such abandoned claim shall be turned over to the State Dispensary Commission as an asset of the State Dispensary: Provided, all persons, firms or corporations shall have not less than ten days' notice of any hearing of any and all claims, and shall have full opportunity to be heard in their own behalf: Provided, further, the Attorney-General, or other attorney for the State, shall file with the State Dispensary Commission a statement showing the amount claimed

37 to be due by each such person, firm, or corporation, to the State, and a copy of such claim shall be mailed to the address of such person, firm or corporation not less than ten days before the date fixed for hearing thereon.

SEC. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several county dispensary boards now existing and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all county dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State.

SEC. 7. The State Dispensary Commission is hereby empowered to pass all orders and judgments and do any and all things necessary to carry out the purposes of this Act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this State, and a

transcript of said judgment shall be filed in the office of the Clerk of the Court of Common Pleas in each county where any property of such judgment debtor is situated.

SEC. 8. In all cases where any conflict may arise between the provisions of this Act and any other Act or Acts of the General Assembly concerning or regulating any of the matters covered by this Act, the provisions of this Act shall control.

SEC. 9. In all cases pending before the said State Dispensary Commission upon any claim or claims against any person or persons, or any corporation or corporations, owning any real estate in 38 any county in this State, the said commission shall file in the office of the Clerk of Court in each county where such real estate is situated a notice of the pendency of such cases and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon any such real estate acquired subsequent to the filing thereof, and the debt found by said commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State.

SEC. 10. This Act shall take effect immediately upon its approval by the Governor.

In the Senate House, the 19th day of February, in the year of our Lord one thousand nine hundred and ten.

THOS. G. MCLEOD,
President of the Senate.
RICHARD S. WHALEY,
Speaker of the House of Representatives.

Approved the 23d day of February, A. D. 1910.

M. F. ANSEL, *Governor.*

(Acts 1910, page 876.)

39 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY Patton, and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Return of W. F. Stevenson to Rule to Show Cause.

The respondent, W. F. Stevenson, makes the following return to the rule herein served:

1. That he adopts so much of the return of B. L. Abney, Esquire, as is not inconsistent with the statements hereinafter made.
2. That he was employed on the 19th of February, 1907, as the general counsel of the State Dispensary Commission, and has been acting in that capacity up to the present time.
3. That on the afternoon of November 20, 1909, respondent was called over the long distance telephone by Mr. W. H. Lyles, 40 representing the Carolina Glass Company, and from the statements made by Mr. Lyles, respondent understood that he was in doubt whether the money then due from the County Dispensary Boards to the Carolina Glass Company had been held up pursuant to orders issued either by the Governor, the State Dispensary Commission or the Attorney-General (respondent is not sure which), and he desired to know if it was the intention to hold future as well as past shipments, and it was represented to him that there were contracts outstanding to furnish glass to county dispensaries which would not be filled if the said orders should apply to shipments made subsequent to that date; that the situation would cause great embarrassment to the county dispensaries, inasmuch as they were compelled to have the glass, and were asking that the contracts be carried out; that respondent is informed and believes that there was about ten thousand dollars due to the Carolina Glass Company from the various county dispensaries at that date, and in consequence of the statements of Mr. Lyles he agreed that the subsequent shipments would not be held up, and that the question of holding or releasing the moneys already due was to be taken up and settled by a conference with the attorneys, and in the meanwhile the status that then existed should remain; that is, that all sums then due by all Dispensary Boards were to be held until further orders; that in consequence of that, the letter was written which is set forth in the petition of the Carolina Glass Company, found on pages seven and eight of the printed copy of the complaint, restricting the agreement to future shipments and leaving the matter of amounts already due to be determined thereafter. The following paragraph of the letter deals with that feature:

"I will confer with you as to the accounts due the company as soon as I have reached a determination as to them."

Mr. Lyles about the same time wrote respondent a letter, which is exhibited herewith.

- 41 That pursuant to the understanding, and without going further into the matter, respondent and his associates took no action thereafter in the Court of Common Pleas, as had been contemplated, to have the money held, supposing that, until some agreement was reached, there would be no interference with the money which was then due. No conference was ever suggested by the attorneys for the Carolina Glass Company, and while many other cases were instituted holding up funds due to parties in the same plight as the Carolina Glass Company, no suit was instituted in this case, reliance being placed upon the moneys being undisturbed as a result of said agreement. Respondent on investigation now finds that, instead of the Carolina Glass Company's collecting only for business shipped subsequently, they have collected also a large part of the

money due on and prior to November 20, 1909, and that the sum that is now due to them from all sources, as shown by their petition, is \$6,355.92; whereas, had the agreement as respondent understood it been lived up to, there would be, as he is informed and believes, a little over ten thousand dollars due the said Glass Company, held to protect the State's rights as against said company.

Respondent further says that in this matter he is acting as attorney for the State of South Carolina, and is not liable to be enjoined or sued, as it is indirectly a suit against the State.

Wherefore, he demands that the rule be dismissed as to him, with costs.

B. L. ABNEY,
W. F. STEVENSON,
ANDERSON, FELDER, ROUNTREE &
WILSON,

Defendant's Attorneys.

J. FRASER LYON,
Attorney-General.

April 25, 1910.

42 STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me W. F. Stevenson, who on oath says that the allegations of the foregoing return are true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

W. F. STEVENSON.

Sworn to and subscribed before me this 25th day of April, A. D. 1910.

C. S. MONTEITH, [SEAL.]
Notary Public for S. C.

EXHIBIT.

(Copy.)

NOVEMBER 20, 1909.

W. F. Stevenson, Esq., Cheraw, S. C.

DEAR SIR: Mr. John T. Seibels and I, representing the Carolina Glass Company, of this city, today called on the Attorney-General and the Governor with reference to the claims of that company against the county dispensaries, and were referred by them to you, with the information that you had charge of the claims of the State arising out of the findings of the Commissioners investigating the dispensary affairs.

The situation is just this: We notice by the morning papers that his Excellency, the Governor, has issued an order, directed to the county dispensaries or the auditor of the county dispensaries, requiring them to withhold payment of all funds due to certain liquor houses named in the order, with a view of having proceedings taken to sequester the same for payment of claims due, or supposed to be

due, to the State of South Carolina. We do not notice the name of the Carolina Glass Company in that order, and the Governor and the Attorney-General tell us that no special conference has been had with reference to that company. It being a domestic corporation, 43 having its place of residence and business in the City of Columbia, we infer that it is not your purpose to direct the sequestration of the accounts due to the company by the county dispensaries and the question presents itself under these circumstances.

The county dispensaries now running, or some of them at least, have contracts with the Carolina Glass Company for the periodic or occasional delivery of bottles, demijohns, etc. There are now orders in the hands of the company from the Aiken dispensary and the Richland dispensary, and perhaps one or two others, for the prompt shipment of bottles and demijohns, and, of course, if the company's claims for these shipments are to be held up and not paid, it is not a prudent thing for them to make the shipments. The officers of the company, under the advice of Mr. Seibels and myself, have concluded, notwithstanding the embarrassment which the matter may cause, to fill the orders which they now have on hand ready for shipment, relying upon the good faith of the State authorities not to interfere with the payment, at least for these shipments.

I have put in a call over the long distance telephone for you in order that I may converse with you on this subject, but would be very glad if you would give me a prompt reply to this letter. We would be glad to know, in the first place, if you are going to order the holding up of the amounts already due by the county dispensaries to the Glass Company; and, in the second place, whether you would consent to the arrangement that all amounts hereafter incurred should be paid whether the amounts already due are held up or not. Upon the answer to this last query depends whether the company can continue to fill the orders now on hand.

Yours truly,
(Signed)

WM. H. LYLES.

W. H. L.—T.

44 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Constituting the State Dispensary Commission; J. FRASER LYON, Attorney-General of the State of South Carolina; W. F. STEVENSON, B. L. ABNEY, and CLIFFORD L. ANDERSON, JAMES L. ANDERSON, THOS. B. FELDER, JR., DANIEL W. ROUNTREE, and CHAS. G. WILSON, Constituting the Firm of ANDERSON, FELDER, ROUNTREE & WILSON, Defendants.

Return of B. L. Abney to Rule to Show Cause.

B. L. Abney, upon whom has been served a rule to show cause before the Supreme Court of the State of South Carolina why the per-

petual injunction and other and further relief prayed for in the complaint annexed to said rule should not be granted, for cause and in answer to the said complaint shows:

That just after the rendition of the decision of the State Dispensary Commission in the matter of the Carolina Glass Company v. The

State, the firm of Anderson, Felder, Rountree & Wilson, who,
45 he was advised and informed, had been employed as attorney's

to collect certain claims which the State had against certain persons, firms and corporations by reason of their improper and illegal transactions and dealings with the old State Dispensary and its officials, among which claims was one against the Carolina Glass Company for \$28,419.24, requested him to become associated with them; that at that time it was not determined whether or not an independent action would be brought against the said Glass Company, and that his employment with regard to this case was dependent upon the event whether such suit or further independent action would be brought in the future.

That thereafter a copy of the letter of W. F. Stevenson to Mr. W. H. Lyles, attorney, of date November 20, 1909, was received by this respondent, but no further action or attention was given to the matter, so far as he can now recall; that a few days subsequent to the approval, on the 23d of February, 1910, of the amendatory Act mentioned in said complaint, this respondent, with the Attorney-General and other counsel, concluded that it was proper that proceedings should be instituted before the State Dispensary Commission, in accordance with the terms of said Act, and that notices mentioned therein, and which are set out in paragraph nine of the complaint, should be given; that the same was prepared by Mr. Stevenson, with the approbation of this respondent and other counsel, and he is informed that the same was filed in the office of the Clerk of the Court of Common Pleas for Richland County. This respondent, however, has no personal knowledge that any such notice was given to the chairman of the County Dispensary Board of Richland County, or any other parties. He is informed that some demand was made upon the County Dispensary Board of Richland County, as alleged in paragraph ten of the complaint, in pursuance of the provisions of the said Act.

This respondent, outside of and beyond the matters above set forth, does not recall that he has taken any part in any proceeding or action against the Carolina Glass Company, and
46 does not know, of his own knowledge, of any matters and things in said complaint stated; but, as and for a further answer and return to said complaint, and made upon information and belief, he adopts the return and answer made and filed this day by the State Dispensary Commission.

Wherefore, he asks that the said rule be discharged and the complaint dismissed as against him, and he will ever pray,

B. L. ABNEY.

April 25, 1910.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me B. L. Abney, who being duly sworn says that he has read the foregoing return and answer and that the same is true of his own knowledge, except those matters therein stated to be upon information and belief, and as to those he believes it to be true.

B. L. ABNEY.

Sworn to and subscribed before me this 25th day of April, A. D. 1910.

C. S. MONTEITH, [SEAL.]
Notary Public for S. C.

47 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
 against

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and J. S. BRICE, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thomas B. Felder, Jr., Daniel W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Return of J. Fraser Lyon, Attorney General, to Rule to Show Cause.

J. Fraser Lyon, upon whom has been served a rule to show cause why the perpetual injunction and other and further relief prayed for in the complaint annexed to said rule should not be granted, for cause and in answer to said complaint shows:

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That he admits that he is now and was during the times mentioned in said complaint the duly elected and qualified Attorney-General of the State of South Carolina, and as such, under 48 the Acts of the General Assembly mentioned in said complaint and concerning the winding up of the State Dispensary, was and is the legal adviser of the said State Dispensary Commission, and further admits that the plaintiff, through its attorneys, Messrs. William H. Lyles and John T. Seibels, did communicate with him with regard to the matter mentioned in paragraph eight of said complaint, and in the affidavits of said William H. Lyles and John T. Seibels, and that he referred said attorneys to Mr. W. F. Stevenson, who was taking active charge of the claim of the State of South Carolina against the plaintiff for the amount which the Dispensary Commission in its investigation had ascer-

tained to be due the State over and above the claim which had been presented to it, and that later he received from Mr. Stevenson a copy of the letter of date November 20, 1909. That with regard to the further allegations of the complaint and said affidavits, this respondent adopts the return and answer of the State Dispensary Commission as his return and answer.

II.

Further showing cause and making return to said rule, this respondent respectfully shows to the Court that by the statutory law of the State, and by the Acts of the Legislature concerning and providing for the winding up of the State Dispensary, he as Attorney-General, is required to advise the said State Dispensary Commission on the part and behalf of the State, and to take such other and further proceedings as the Attorney-General of the State ought to and should in the premises take for the protection and enforcement of the rights and claims of the State against any and all persons owing the State on account of and by reason of their dealings and transactions with the old State Dispensary, and that he, as such

49 Attorney-General, has, in the performance of the duties and requirements of such statutes, proceeded in such manner and in only such manner as is directed and provided for by law, and he respectfully submits to the Court that, as an officer of the State, acting under the statutes of such State, he is not liable and responsible for the advice given and conduct concerning such matters in any action, suit or proceeding in the courts of this State, either individually or as an officer of the State, and he, therefore, submits to the Court that no cause or causes of action is set forth in said complaint or affidavits against him to which he should make answer and reply.

Wherefore, he asks that the said rule be discharged and the complaint herein dismissed, so far as this respondent is concerned.

J. FRASER LYON,
Attorney-General.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me, J. Fraser Lyon, who, on oath, says that he is the Attorney-General of the State of South Carolina; that he has read the foregoing return and answer, and that the same is true of his own knowledge, except as to those matters herein stated on information and belief, and as to them he believes it to be true.

J. FRASER LYON.

Sworn to and subscribed before me, this April 28, 1910.

A. S. SALLEY, JR., [L. S.]
Notary Public for South Carolina.

50 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY
Patton and J. S. Brice, Constituting the State Dispensary Com-
mission; J. Fraser Lyon, Attorney-General of the State of South
Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Ander-
son, James L. Anderson, Thomas B. Felder, Jr., Daniel W. Roun-
tree, and Chas. G. Wilson, Constituting the Firm of Anderson,
Felder, Rountree & Wilson, Defendants.

*Return of Anderson, Felder, Rountree & Wilson to Rule to Show
Cause.*

The firm of Anderson, Felder, Rountree & Wilson do hereby make
return to the rule herein and say:

That they adopt the statements in the returns of their correspond-
ents, the State Dispensary Commission, B. L. Abney, Esquire, W. F.
Stevenson, Esquire, and the Attorney-General of the State, as their
return, in so far as the same is applicable to them.

Wherefore, they ask that the rule be dismissed as to them, with
costs.

ANDERSON, FELDER, ROUNTREE & WILSON.

April 25, 1910.

51 STATE OF SOUTH CAROLINA,
County of Richland:

Personally comes Clifford L. Anderson, who, on oath, says that
he is a member of the firm of Anderson, Felder, Rountree & Wil-
son; that he has read the foregoing return, and that the statements
therein made are true of his own knowledge, except those made
upon information and belief, and as to those he believes them to
be true.

CLIFFORD L. ANDERSON.

Subscribed and sworn to before me, this May 2d, 1910.

[~~SEAL.~~]

D. W. McLAURIN,
Notary Public for S. C.

52 STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910, in the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
vs.
W. J. MURRAY, Chairman, et al., Defendants.

Evidence.

COLUMBIA, S. C., 11 May, 1910.

Pursuant to the following Order of the Supreme Court signed by Hon. Ira B. Jones, Chief Justice, and dated April Term, 1910, and filed 2 May, 1910, to wit, "The defendants having made return to the Rule to Show Cause in the above case and Counsel having stated that there are questions of fact involved, it is now

Ordered that it be referred to the Master for Richland County to take the testimony upon such questions of fact as arise upon the Complaint and affidavits annexed thereto and the Returns and Answers of the defendants and report the facts to this Court on or before the 19th of the present month." I this day held a reference herein at the office of the Master for Richland County in the County Court House, in said City.

Present:

Messrs. Lyles & Lyles, D. W. Robinson and John T. Seibels, on behalf of the Petitioners;

Hon. J. Fraser Lyon, W. F. Stevenson, Esq., and B. L. Abney, Esq., on behalf of the Respondents.

The Pleadings were read.

Mr. Robinson called Mr. WILLIAM H. LYLES, on behalf 53 of the Petitioner, who, being duly sworn, testified as follows:

Q. Did you have any conversation or transaction on November 20, 1909, with Mr. Stevenson or with anyone representing the State Dispensary Commission, or the State of South Carolina, with reference to moneys coming to the Carolina Glass Company on its contracts for glass furnished to the County Dispensaries?

A. I did. On that day Mr. John T. Seibels and I having noticed a reportorial statement in the morning papers about the action of the Dispensary Commissioners with reference to amounts due by certain liquor houses by the several County dispensaries went down to the State House and saw the Governor and the Attorney General with reference to the matter.

The result of this interview was embodied in a letter which was written by me immediately upon my return to my office to Mr. Stevenson.

That letter was dated the 20th of November, 1909, and is copied,

I think, correctly, although I have not compared it with my letter press copy, in the return of Mr. Stevenson in this case.

MR. ABNEY: We will object to the introduction of that letter. That letter simply shows what Mr. Lyles considered to be the result of his interview, and we would ask that he detail the interview, what he said and what they said with regard to it, so that we may draw our own conclusions and results from it.

MR. ROBINSON: Go on in your own way. That can come out on cross examination?

Taken subject to objection.

A. That letter had been written in my office and signed by me, I having put in a call for Mr. Stevenson at Cheraw over the 54 long distance phone and having succeeded in getting into communication with him, had the letter in my hands at the time of my conversation with Mr. Stevenson over the phone, and I told him that Mr. John T. Seibels and I had been down during the morning to see the Governor and the Attorney General with reference to the amounts, without stating what they were, that were then due by several of the County Dispensary Boards to the Carolina Glass Company for glass, and I stated to him that both the Governor and the Attorney General had said to us that he, Mr. Stevenson, was the attorney specially charged with this matter, and that we, Mr. John T. Seibels and I, would have to communicate with him, and made him understand that this was my purpose in calling him up over the phone.

I stated to him that we had seen in the morning papers the report to the effect that orders had been issued by the Governor to certain County Dispensary Boards to hold up sums of money due by them to certain liquor houses, that we had noticed that the name of the Carolina Glass Company did not appear in the report, and that we had assumed that this was because the Carolina Glass Company was a domestic corporation, and that we assuming that the hold up was to give an opportunity to the State of South Carolina to commence proceedings by attachment against the liquor houses named, and the Carolina Glass Company being a domestic corporation, that it was not their purpose to hold up the funds as to that company.

The conversation with Mr. Stevenson was substantially the same as the statements embodied in my letter previously written, varied, of course, by the different style, that is, one was conversational and the other was a formal communication.

Q. What did Mr. Stevenson say with regard to this matter?

A. Mr. Stevenson over the phone did not say anything material as I recollect it.

55 I myself was careful to say nothing except to the effect of the statements contained in the letter, and I asked Mr. Stevenson as soon as he received my letter to give me a prompt reply in writing so that the Glass Company could know whether to ship out certain carloads of bottles that had been ordered by the Richland Dispensary and by the Aiken Dispensary, I think.

Mr. Stevenson was very courteous in his conversation and said

that he would reply as soon as my letter was received, or that he would reply.

The next morning I got a letter from him. It was evidently written before my letter of November 20, 1909, was received by Mr. Stevenson.

It was written on the afternoon of the same day of the conversation, and that letter makes me think that perhaps I asked him in the conversation to give me in writing his statement with reference to the matter at once. It was evidently written before my letter of the 20th was received by him.

Q. Is that letter set out in your own return?

A. That is the letter that is set out in the complaint.

Q. Complaint I mean?

A. In the case of Carolina Glass Company against Murray, and others.

Q. Did you receive any further communication from Mr. Stevenson in reference to this matter?

A. I received nothing from Mr. Stevenson at all with reference to the matter, and never had any further conversation with him.

Mr. Stevenson in that conversation did not say anything whatever to me to lead me to suppose that the Carolina Glass Company was not to collect the amounts that were then due by the several County Dispensaries, if it could do so.

There was certainly nothing said by me in the conversation to indicate that we would consider ourselves as even morally bound not to get the money if the County Dispensary Boards would pay it.

56 Q. Is there anything further with reference to that point you wish to state?

A. I understood from his letter, and my action was based entirely upon his letter, and not upon the phone conversation, that they regarded their right to get jurisdiction of the Carolina Glass Company in any action which might be commenced as certain, and, therefore, that they did not contemplate any extraordinary proceeding in the way of holding up the funds that were due to the Carolina Glass Company.

I thereupon so advised the Carolina Glass Company that it was perfectly safe for that Company to go on and make sales and deliveries of bottles to the several county dispensary boards until we should receive further notice from Mr. Stevenson or other attorneys engaged in the matter.

Q. Now, Mr. Lyles, at page 15 of the Return to the Rule to Show Cause filed by W. J. Murray, et al., it is stated that the Carolina Glass Company and its counsel had full knowledge or opportunity to know of the Act (referring to the Act of February 26, 1910, entitled An Act to Further Provide for Winding up the Affairs of the State Dispensary) while it was on its passage in the General Assembly. What have you to say in reference to that?

A. I first saw, I think, in the State that a bill to that effect had been introduced into the General Assembly. I then ascertained that the bill had been as introduced into the House had been referred to one of the committees of the House, and showing some interest in

the matter by an effort made with the chairman and the clerk of the committee to see the bill as introduced, the clerk and the 57 chairman became aware of the fact that I was probably interested in the subject, and on the afternoon of the consideration of the bill before the committee I was down at the Senate end of the building before another committee, I think the Railroad Committee of the Senate, when I received a message from the chairman of the committee, as I understood at the moment that it was a committee of the House, but it met in the Senate chamber, and probably was a Senate committee to which the bill was referred, that the bill was up for consideration and wanted to know if I wished to be heard.

I went before the Committee, and I found there besides the members of the committee the Attorney General and Mr. Wash Clark and Mr. Townsend, I think it was, the clerk of the Committee.

I was asked if I wished to be heard on the bill, and I said that I had read the bill, and did not suppose that it was intended to affect the interests of the Carolina Glass Company as to its claim. I did not suppose that it was intended to have a retroactive effect.

My impression is that the bill was then in a materially different form from that in which it finally passed and became a law.

The Attorney General spoke up and said that I was right in my supposition that it was not intended to affect the interests of the Carolina Glass Company.

I was not at all interested in the passage of the bill from any other standpoint though I regarded it as very unfortunate that the State of South Carolina should deem it necessary or important, some such expression as that, to have legislation of such a confiscatory character passed, or language to that effect. I cannot remember the exact words that were used.

58 I then thanked the chairman of the committee for having called me and retired.

To that extent I did know of the pendency of the bill in the General Assembly.

How I got the impression I do not know that it was before a committee of the House, but the sitting of the committee was held in the Senate chamber.

Q. Is that all the knowledge you had of it during its passage?

A. That is all the knowledge I had of it. I did not afterwards concern myself with reference to the bill at all, nor can I state positively what was the form of the bill at the time it was up for consideration before this committee, but think that it was in a substantially different form from that in which it was finally passed.

Q. Is there anything else you wish to say about it?

A. Nothing else.

Cross-examination :

Mr. ABNEY: Mr. Lyles, didn't you also see published on the morning after, or the next morning after that, the resolution passed by the State Dispensary Commission?

A. The morning after what?

Q. The morning after the rendition of that judgment in the Carolina Glass Company case?

A. The morning after the rendition of that judgment in the Carolina Glass Company case?

Q. Yes?

A. I had seen either a repo-torial account of the action of the Dispensary Commission or a publication of the resolution on the morning of my conversation with Mr. Stevenson over the phone, and on the date of the letter which was written to Mr. Stevenson.

59 I don't recollect now whether that was the morning after the publication of the judgment against the Carolina Glass Company or not.

Q. The date of the judgment of the Carolina Glass Company case is November 17. When did you read or become aware of that decision?

A. I became aware of it as soon as it was filed. If it was filed on the 17th, I think I knew of it that very day. If it was not filed until a day or two afterwards, I did not know of it until it was filed.

Q. So that you knew that the Dispensary Commission had in its findings declared that the Carolina Glass Company owed the State something near twenty-nine thousand dollars?

A. I did certainly at the time I wrote that letter to Mr. Stevenson. I knew that.

Q. And at the time you saw the resolution of the State Dispensary Commission, and the direction of the Governor published?

A. Yes, at the time I knew of the existence of such a finding.

Q. When you went down to the State House did you see the Governor separately, and the Attorney General separately, or did you see both together?

A. I saw them separately. I can't say which I saw first, which Mr. Seibels and I saw first, probably saw the Governor first.

Q. First?

A. I say probably. I would not undertake now to say which one we saw first.

Q. You say you had the letter, that is your letter of the 20th of November, in your hands when you were phoning Mr. Stevenson?

60 A. I had that letter or a copy of the letter.

Q. Or a copy?

A. Yes, sir.

Q. And then I believe you told him that you had certain amounts, statements of amounts, due by the county dispensary boards in your hands, but you did not tell him what those amounts were?

A. I did not say that. You misunderstand. I did not say we had certain amounts in our hands.

Q. At the time statements of the amounts?

A. No, I did not state that. I had never seen a statement of the amounts then due by the several county dispensary boards. What I said was that I stated to him that there were certain amounts due.

Q. As a matter of fact, Mr. Lyles, you knew that there was a pretty large—you had been informed by your client that " were

certain county dispensary boards owing the Carolina Glass Company for glass already sold and delivered, did you not?

A. Yes, sir, we knew that, had that information from your client.

Q. Now, you had that information when you phoned Mr. Stevenson?

A. Yes, I had that information. We so understood.

Q. You knew there were what were called dry counties?

A. Yes, counties where the dispensary had been voted out.

Q. Certain of them were owing the Carolina Glass Company?

A. We so understood.

Q. You knew certain counties were wet counties that owed the Carolina Glass Company certain amounts, did you not?

A. We so understood.

61 Q. For glass already sold and delivered?

A. Yes, sir.

Q. And you had an idea as to what that amount was?

A. No, I did not. My recollection now is that the amounts were not stated to us at all by the officers of the company.

Q. When you took this matter up with the Governor and the Attorney General it was to obtain possession, or get in position to collect the amounts already due, or was it to go on with glass which had been sold or ordered, and was in the way of delivery?

A. The occasion of our taking the matter up on that day was that orders had been received from the Aiken Dispensary, I think, and the Richland Dispensary Boards for the prompt shipment of glass, and the Carolina Glass Company was unwilling to ship that glass if it was the purpose of the State authorities to pass an order for the holding up of the amounts that would become due for that glass.

Q. That was your principal object, was it?

A. That was, I think, our sole object in taking the matter up for consideration at that time.

Q. Now, you had your letter before you, you say?

A. I think so, yes, sir, I am sure I did.

Q. Don't you think, Mr. Lyles, upon reference to your letter and refreshing your mind, that you made two distinct propositions to Mr. Stevenson over the phone?

A. I don't think so, sir. I don't think I made any proposition with reference to the amounts that were then due, or that would become due for glass which had been already delivered. I think the subject was mentioned merely as introducing the conversation.

Q. Just as a matter for you to explain?

62 A. I would be glad to explain it if I could.

Q. Referring to your letter, the next to the last sentence of the last paragraph, what do you mean by this, "We would be glad to know, in the first place, if you are going to order the holding up of the amounts already due by the County Dispensaries to the Glass Company". Doesn't that refer to all the amounts?

A. I think it does, evidently it does.

Q. Don't you ask him about that, "in the second place, whether you would consent to the arrangement that all amounts hereafter

incurred should be paid whether the amounts already due are held up or not?"

A. Yes.

Q. After looking at that don't you think you took both of these subjects up with him over the phone?

A. My recollection is that I did not over the phone, that I did not in this letter make any suggestions to Mr. Stevenson as to any understanding about the amounts that were due or were to become due for glass already sold but that I was merely asking for information on that subject.

What I wanted was, and the occasion of my conversation and correspondence, was as to the future delivery of glass.

Q. After you received Mr. Stevenson's letter of the 20th of November, you say you advised the Glass Company that they could safely go on and comply or fill the orders that had been made?

A. I did, yes.

Q. Did you also advise that they could safely go on and collect the moneys already due?

A. I don't think I did. I don't think I said anything about the matter.

Q. Did they do that without your advice?

A. I think so, but I certainly would have advised them to do it until some other order was made by the Dispensary Commission or the attorneys engaged in the case.

Q. Do you think you would after noting the last sentence of Mr. Stevenson's letter?

A. I certainly would.

Q. As a matter of fact, don't you think you did?

A. Advise them to collect the money?

Q. To go ahead and collect the moneys that were due in these dry counties?

A. I don't think that I did, though if my advice had been asked on the subject, I would not have hesitated to do so.

Q. You would not have hesitated under this letter of Mr. Stevenson's?

A. No, sir, not at all.

Q. Look at page seven or eight of your Rule to Show Cause, at the top of page 8?

A. Yes, sir.

Q. In the letter he says to you, "I will confer with you as to the accounts due the company as soon as I have reached a determination as to them"?

A. Yes, sir, that is correct.

Q. Would you have advised your people, and did you advise your people to go ahead and collect money after receiving that letter?

A. I say I don't think my advice was asked about that, but I would unhesitatingly have done so, if they had asked my advice on that subject.

Q. Under that letter?

A. Under that letter.

I had in my letter to Mr. Stevenson said, "We do not notice the

name of the Carolina Glass Company in that Order and the Governor and the Attorney General tell us that no special conference had been had with reference to that Company. It being a domestic corporation, having its place of residence and business in the city of Columbia, we infer that it is not your purpose to direct the sequestration of the accounts due to the Company by the County Dispensaries, and the question presents itself under these circumstances."

64 I then went on with reference to the other matter. Mr. Stevenson in his letter had said, "The Company being a resident corporation, we haven't the difficulty as to jurisdiction which we have in other cases."

I did not regard the judgment of the Dispensary Commission as worth the paper it was written on.

Q. We will not take any more argument?

A. I am answering your question.

Q. That is no answer?

A. I think it is.

Q. I asked you did you or did you not in view of the last sentence of Mr. Stevenson's letter advise your client to go on and collect the moneys past due by those county dispensaries.

A. I replied to that. I answered that I don't think that I advised it, that I would not have hesitated to advise it, and I am going on giving my reasons.

Q. I don't care for your reasons.

A. I think I am right in giving them.

Mr. ABNEY: I object and ask that they be taken down on a separate sheet.

(They are hereto attached as Exhibit A.)

Q. Now, Mr. Lyles, to go back to our question, do you know when these amounts from these dry counties were collected by your client?

A. I do not. I never knew that they were collected until after the commencement of this action.

65 Q. You have been informed by your client since the commencement of this action that they were collected on the 23rd?

A. 23rd?

Q. On the 23rd of February?

A. I don't know that I have been informed as to when they were collected.

Q. 23rd of November?

A. I don't know that I was informed as to when they were collected.

Q. You did know that when you filed this complaint in this case they had been collected prior to that?

A. Yes, I was informed that they had then been collected. I was informed at that time that they had then been collected.

Mr. STEVENSON: Mr. Lyles, the matter about which you talked to Mr. Lyon as to the Act that was pending related to the question

whether it would affect your Glass Company's appeal. That is what you were discussing, were you not?

A. It was with reference to the claim of the Carolina Glass Company which had been considered by the Dispensary Commission.

Q. It had no reference to anything else?

A. No, it did not have reference to anything else.

Q. And the statement by Mr. Lyon that it did not refer to your Glass Company matter was merely relating to the claim which was then pending on appeal, as I understand it, to the Supreme Court?

A. Well, there was nothing whatever said as to any future dealings with the County Dispensary Boards, and I had stated that I was only interested in the claim of the Carolina Glass Company which was then under appeal.

66 Q. Under appeal?

A. So I assumed that the Attorney General's remark would properly apply to that.

Q. You were apprehensive that making those findings final would cut off your appeal?

A. Well, I can't say that I was apprehensive of it. I thought that perhaps the act—the bill—that was then under consideration might be considered or claimed as having some influence upon that appeal.

Q. And that was the matter to which Mr. Lyon referred?

A. I think that was.

Q. Was there anything said with reference to any moneys then due from the dispensaries to the Carolina Glass Company—was anything said about that?

A. Nothing was said about those moneys at all at that time.

Q. That was the sole interest of the Glass Company that you were apprehensive might be affected or might be claimed to be affected?

A. That was, and yet I could have conceived that that was affected by any bill which was intended to give validity to that judgment, which judgment I considered to be utterly without validity.

MR. ROBINSON: Was there anything said in that conversation before the committee by yourself or by the Attorney General as to that bill's effect on the appeal particularly, or was it the bill's effect on the Carolina Glass Company?

A. Well, my recollection is that I stated to the committee that I represented the Carolina Glass Company with reference to that judgment which had then been carried by appeal to the Supreme Court.

67 My recollection is that that was said, and I did not suppose the bill was intended to affect the claim of the Carolina Glass Company at all.

Q. And that proposition was denied by the Attorney General?

A. That was the proposition that was denied by the Attorney General.

68 Mr. Robinson calls Mr. J. C. TOWNSEND, who being duly sworn, says:

Q. Did you have any connection or relation with any of the committees of the General Assembly at its session in January and February last?

A. Yes, sir.

Q. What was that relation?

A. I was Clerk of the Judiciary Committee of the Senate, and also Clerk of the Committee on Police Regulations of the Senate.

Q. Were you present before the Committee on Police Regulations, wasn't it?

A. Yes, sir.

Q. At the time Mr. Lyles appeared before it in reference to an Act then on its passage to further provide for winding up the affairs of the State Dispensary?

A. Yes, sir, I was.

Q. Can you tell us who was present?

A. There was present, Senator Black, from Bamberg, Chairman of the Committee; Senator Alan Johnstone, of Newberry; Senator Crosson, of Lexington. That is all that I can remember.

I remember distinctly that there was not a full committee. There might have been probably others.

The Attorney General was present, Mr. Clark, Mr. Lyles and myself.

Q. What statement was made if any by the Attorney General before that Committee and in your presence with reference to the effect and bearing of that Act upon the claim of the Carolina Glass Company?

A. If you will just allow me to make a statement like this, that at the instance of the Chairman I was asked to call Mr. Lyles, 69 who was then on attendance in the Judiciary Committee room of the Senate at some Committee. I don't remember what Committee.

I called him and he appeared. He was informed by the Chairman of the Committee that they had under consideration a certain bill with regard to Dispensary affairs.

Mr. Lyles wanted to know if it had any bearing on the case with regard to the Carolina Glass Company. To the best of my recollection the Attorney General informed him that it had nothing to do with the Carolina Glass Company case, that the terms of the bill would affect that case in no manner, in no wise, whereupon Mr. Lyles retired.

70 Mr. Robinson calls Mr. WASHINGTON CLARK, who, being duly sworn, says:

Q. Mr. Clark, were you present before the Police Committee of the Senate in January or February of this year when it had before it on its passage An Act to Further Provide for Winding up the Affairs of the State Dispensary?

A. Yes, sir.

Q. Do you recollect Mr. Lyles being there?

A. Yes, sir.

Q. And the Attorney General?

A. He was.

Q. Will you tell us what statement was made in your presence by the Attorney General with reference to the effect of that Act on the Carolina Glass Company?

A. About the same as was stated by Mr. Townsend, that it was not intended to affect the Carolina Glass Company. That is my recollection.

Q. Did Mr. Lyles retire when that statement was made?

A. Mr. Lyles retired.

Mr. ABNEY: Mr. Clark, you were in attendance on this Committee representing Lanahan & Co., were you not?

A. Yes, sir, Lanahan & Son.

Q. Lanahan & Son?

A. Yes, sir.

Q. Lanahan & Son also had an appeal pending from the judgment of the Dispensary Commission?

A. Yes, sir.

Q. Were you not also told that this bill would not affect Lanahan & Son's appeal?

A. I don't know that Lanahan was mentioned.

Q. You were there representing him?

A. Yes, sir.

71 Q. Wasn't L-nahan in the same condition as the Carolina Glass Company?

A. His name was not mentioned at that time. I argued against the bill and the Attorney General in favor of it. I believe he did say that since you mentioned it. That was after Mr. Lyles retired.

Q. Would not that have the same effect, as he told Mr. Lyles that it would not affect the appeal in the case of the Carolina Glass Company?

A. My recollection is he said the bill was not intended to affect the Carolina Glass Company, and then Mr. Lyles retired. He did not connect the two cases at all.

Q. Wasn't Lanahan's case in the same position?

A. As the Carolina Glass Company?

Q. It was on appeal just as the Carolina Glass Company case?

A. Yes, sir, just the same.

Q. You said you discussed the question before the Committee?

A. Yes, sir.

Q. Wasn't the whole discussion before the Committee as to whether or not this bill operated as confiscatory, and would not allow a hearing, as to whether that would be the effect of it, that the parties would not get a hearing?

A. On appeal?

Q. No, the whole bill as it affected that appeal?

A. Yes, sir, that was the gist of the argument. I said that if we

went to the Supreme Court, the State would confiscate the property before we could get back.

Q. Did not the Attorney General say that did not affect, and did not intend to affect, cases on appeal to the Supreme Court?

72 A. I believe he did say in argument that they did not intend for it to affect appeals that were pending in the Supreme Court. I believe he did say that in his argument. I did not connect that with the case of the Lanahan- at all.

Q. You were in the same boat?

A. To the extent that both were on appeal.

Q. Both appealing?

A. Yes, sir.

Q. As I understand, this bill was before the Committee on Police Regulations?

A. Yes, sir.

Q. And you were arguing against the bill and Mr. Lyon in favor of the bill?

A. Yes, sir.

Q. The Attorney General was contending that it was a proper bill and was giving his views of the effect of the bill and what the bill was intended for, and the question that you were arguing was to be determined by the Committee, what kind of report to make?

A. Yes, sir, favorable or unfavorable.

Q. And they reported favorably?

A. That is what I understand. It passed.

Mr. ROBINSON: That is our case.

73 Mr. Abney calls Mr. W. F. STEVENSON on behalf of the Respondents, who, being first duly sworn, testified as follows:

Q. Mr. Stevenson, will you just give in narrative form the facts and occurrences in regard to the communications had between you and Mr. Lyles with regard to this question of holding up the amounts past due to the Carolina Glass Company?

A. On the 18th of November after the judgment of the Commission had been filed there was a conference between Mr. Abney, Mr. Felder and myself; there was a certain course mapped out, and Mr. Abney was to prepare the pleadings to bring suits to enforce certain claims of the State against parties who had been found to owe the State, and that night I went to Cheraw, and on Saturday afternoon the 20th I had a call from Mr. Lyles at the long distance telephone.

He stated in his conversation that he had been referred to me by the Governor and the Attorney General, and without saying so in so many words, he impressed me as being in doubt as to whether the claims already due the Carolina Glass Company were held up.

Mr. ROBINSON: The plaintiff objects to the witness giving his impressions, and requests that the witness give the facts that occurred.

The WITNESS: Mr. Lyles stated that he had interviewed the Governor and the Attorney General, and that he had not seen the name of the Carolina Glass Company in any of the orders issued holding up funds, and that he had been referred to me, and then passed on to

that matter. He said that the Glass Company and certain dispensaries were in an embarrassing position from the fact that they had contracts to furnish glass, and that if we proposed to hold up 74 the money for new shipments, they could not ship them, and that he wanted to know that in case we insisted on sequestering, that was the term he used, the funds already due, whether I would not agree that we would not claim and sequester the funds from subsequent shipments.

I told him that as to the funds already due I could not release anything, but would see him as soon as we had a full conference, but that as to future shipments, I would say that until further notice that we would not make claim for this.

He thanked me and asked me to write him a letter to that effect, and stated that he had written me a letter, before he had gotten me on the phone.

Mr. Lyles stated a while ago that I did not make him any promise, that we had no understanding over the telephone. His memory is incorrect as to that, and his petition states that part of it correctly when he states that he "was informed by the said Defendant W. F. Stevenson that no action would be taken to interfere with or hold up the amounts that might become due to the plaintiff on account of goods that might be sold or shipped to the said County Dispensaries on or after the said 20th day of November, 1909; and being requested by the said Wm. H. Lyles to give him such a statement in writing, the said defendant W. F. Stevenson, on the said 20th day of November, 1909, wrote to plaintiff's said attorney a letter, as follows, to wit:"

That is a correct statement of what occurred.

The agreement was made over the telephone and my statement of it is that there was to be nothing done with the claims already due until we had a further conference, but that for future shipments there was to be no claim until further notice.

75 Immediately when I left the telephone late on Saturday evening I wrote the letter which is set out in the petition.

I sent a copy of it to each of my associates and at the same time I wrote them an accompanying letter, which I hold in my hand, in which this statement was made to them, stating the agreement I had made over the telephone, "We are holding on—

Mr. ROBINSON: We object to an extract from the letter unless the whole letter is put in.

The WITNESS: "We are holding on to the money in the County Dispensaries already due them, and believe this will bring about a settlement".

And another extract, "I believe that holding the funds now due them will cause them to make terms and abandon their appeal and pay something to be let alone".

This is the letter I wrote immediately after writing the one to Mr. Lyles and with it I sent a copy of the letter written to Mr. Lyles which he set out in the petition.

Q. This is a copy of that letter?

A. A copy of the letter to Mr. Lyles accompanied that letter.

The telephone conversation was not a long one, and that request of Mr. Lyles was urgent, for I said in writing that the intention was not to sequester the funds arising from future shipments, as that was the important issue at that time, and it was done immediately.

Mr. Abney offers in evidence letter signed by W. F. Stevenson at Cheraw, S. C., November 20, 1909, and directed to Mr. T. B. Felder, Atlanta, Ga.

Received in evidence and marked Exhibit B.

76 The WITNESS: I never had any suggestion of a conference by counsel for the Glass Company, being under the impression that the funds amounting to eleven thousand dollars were then being held, and we did not take action according to the course outlined at the conference between Mr. Felder, Mr. Abney and myself, and I will state that Mr. Lyon did not concur in any view as to a settlement of this matter, but insisted that the law take its course.

In so far as any settlement was concerned, the action to sequester was not brought as a result of the fact that I was satisfied that in this agreement we had provided for the holding of the funds until the Supreme Court should have passed upon it, or until there was some other agreement.

Mr. Lyles may have understood it that way. If so, our arrangement was made on a misunderstanding between us. The telephone conversation was at a busy time of the day, and it is always possible for that to occur.

On Monday morning, the 22nd, I went immediately to the Marlboro Court, and it was probably the middle of the next week before I saw Mr. Lyles's letter to me, and the matter having all been arranged I did not read it critically even then. I put it in my file and gave the matter no more attention until this action was instituted.

Q. When did you first learn that the moneys had been drawn out, Mr. Stevenson?

A. After the institution of this action. I was under the impression, and we were resting easy, that the money would stay there until the appeal was heard.

Q. Until this notice was given to the County Dispensary Board of Richland what was the purpose or object was it to violate that agreement, or to then take possession, or make demand for those things after they had passed out, and that you supposed had been held up under your letter?

77 & 78 Mr. ROBINSON: The plaintiff objects to witness stating the purpose of those papers. They can speak for themselves, if in writing.

Taken subject to objection.

A. The purpose of the Commission was to follow the Act and take possession of those funds which we supposed were there for us, of course, subject to the decision of the Supreme Court.

If they decided that they were not for us, it would have to be refunded, of course. I would not have advised the Commission to have taken out the funds on a breach of faith.

I supposed the funds were there according to what I thought was the understanding and what w-s my understanding, and which caused me to write the letter.

Q. Do you happen to know that any sales and deliveries were made by the Glass Company to any of the County Dispensaries subsequent to the passage of that Act?

A. I don't know of my own knowledge. I know it only from statements from the Dispensary Auditor issued by him, official statements.

Q. Do you know whether any funds at all arising from sales and deliveries subsequent to the approval of that Act was interfered with by the notice of the 26th of February?

Mr. ROBINSON: I object, unless he knows of his own knowledge. Taken subject thereto.

A. There was none.

Cross-examination:

Mr. ROBINSON: Up to the 20th day of November the Dispensary Commission and the counsel representing them had taken no steps to request the holding up of the payment of any sums due the Carolina Glass Company, had they?

A. I don't know of any steps that were taken, but there were several attorneys, you know.

79 Q. I am asking for what you know.

A. There had not been any action taken as a result of a request from me.

Q. And there had been none taken to your knowledge?

A. I did not know of any that had been held up as a result of any order issued.

Q. Then you had not up to the 20th of November held up any Dispensary funds coming to the Carolina Glass Company?

A. I had not.

Q. What do you mean by the sentence in your letter, "Our holding up funds in the County Dispensaries was preventing them shipping the goods?"

A. I mean by that just what Mr. Lyles states, that we were holding up as I understood directly and indirectly *and indirectly* the funds that were now due, and he was afraid that if they shipped the goods they would naturally hold them up also, showing that was my understanding that the funds already accrued were being held up.

Q. But you just now told us—?

A. You must remember that I was in Cheraw, and there was the Governor, the Attorney General, the Auditor and the Dispensary Commission, and I did not know what they had done, and I understood from Mr. Lyles that he considered it held up. That was the impression I got over there, and that was the reason I declined to release that.

Q. You got that from the conversation over the phone that you have narrated?

A. Yes, sir, I did.

Q. The letter to you of the 20th was never answered?

A. No, sir, because I had written a letter some days before. As I say, I did not get that letter until I got through at the Marlboro Court, which my recollection is that it was Friday of the next week.

80 It was past history then. I wrote him what he asked for.

He told me he had written a letter and told me to put in writing what we had agreed on, and I did so.

Q. What was your idea when you wrote to Mr. Felder these words, "We are holding on to the money in the County Dispensaries already due them, and believe this will bring about a settlement; but I write to know whether it is your idea that we hold these funds also?"

A. My idea was this, that I had the impression, as I say, that Mr. Lyles, while he did not say absolutely that they were being held, that he was somewhat in doubt about it, and really I was in some doubt too whether they were being held, but in my agreement I understood I had with Mr. Lyles, we were to keep those funds in that status until I could have a conference with all the attorneys and make some agreement with them.

Q. And the motive of that agreement is expressed in the last sentence?

A. That does not express any agreement. It simply expresses the result of the agreement, and that is as to the funds already due I will have a conference with you when we will determine what course we will take whether they would be released or whether we would hold the funds. That was the reason for that. That is secondary.

Q. And the statement was that you would confer with him when you reached that conclusion?

A. Yes, sir.

Q. But you did not confer?

A. He did not ask for a conference, and it saved us the trouble of bringing a suit, and — were satisfied if they were willing to leave it standing as it was.

Q. Was it the purpose of the State Dispensary Commission or the attorneys representing it as far as you know to break the Carolina Glass Company?

81 A. No, sir. I stated that in my letter to Mr. Lyles that it was our purpose to enable them to do business, and if we broke them we would not collect our debt. We wanted to arrange as far as possible to let everybody do business.

Q. Is that what you meant when you wrote that it would not help to break the Glass Company by taking away its trade in that way?

A. Yes, sir, I mean it would not help us to collect our debt. That is what I meant. I did not have any desire—in my letter to Mr. Lyles I said the same thing, that it was our intention to enable the Glass Company to do business, and that is my reason. If we had gone ahead and forced them into bankruptcy we would lose our debt. There was no ulterior motive as to the Glass Company except the claim.

Mr. ABNEY: The State Dispensary Commission had already acted

in certain particulars passing a resolution holding up certain funds, and the Governor had already acted in holding up the funds. Was it or not within the power of the Dispensary Commission and Governor Ansel, who representing the State's interest, at any moment to exercise the right or the supposed right to hold up the funds?

A. Yes, sir. My position in the matter was that we requested the Dispensary Auditor to hold it up—it had to be held—and I did not hear anything about what the Dispensary Auditor had done, or had been requested to do.

Q. But after this letter here to Mr. Lyles no action was taken with regard to the matter. It was supposed that it was arranged? Is that it?

A. Yes, sir, that is my understanding acted on by us. We did not care to proceed in unnecessary litigation until the appeal was determined, or to embarrass the Glass Company for the sole reason that we wanted to collect our money.

Mr. ROBINSON: Mr. Stevenson, who framed the Act of 1910 with reference to this matter?

A. I don't know, Mr. Robinson. I did not.

Q. You had nothing to do with it?

A. The Act was well on its way to passage before I ever saw it.

Q. Did you frame any of the amendments subsequently?

A. I don't think I did. I think I carried an amendment framed by another gentleman, and suggested that it go in, and I think in that form it was adopted. I did not frame any amendments myself.

82 Mr. Stevenson calls Hon. J. FRASER LYON, who, being duly sworn, says:

Q. You are Attorney General of South Carolina?

A. I am.

Q. The Act of 1910 relating to the Further Winding up of the Dispensary was drawn by whom?

A. I drew it. The whole of it was drawn by myself in my office, and after it was drawn I sent a copy of it to Mr. Felder's firm in Atlanta to be looked over and it came back with, I think, no corrections except possibly the selection of a better word in one or two places.

After that I have forgotten just what changes took place in it, but there were no changes of very great importance that were made.

Probably the last Section of the Act was added, I am not positive as to that, before its final passage. I believe it was added in the Senate. I forget now who introduced it, possibly Senator Carlisle. He took a good deal of interest in the matter, and I think it was introduced in the House by Mr. Cothran.

A hearing was reached in the Senate. I don't know the Committee before whom it was heard, but the Committee was composed of Mr. Alan Johnstone, Dr. Crosson and Dr. Black from Bamberg—I believe those three were present and heard it.

Mr. Lyles was there in person a part of the time. Mr. W. A.

Clark, Jr., Mr. Washington Clark, and Mr. Townsend were there also.

I will state in this connection that Mr. Townsend was Clerk of one of the Senate Committees, and before that bill was ever introduced, or certainly before it was tacked on as an amendment which finally became law, Mr. Townsend, who wrote that whole business for me, was a Clerk of the Judiciary Committee, and I had it written out with a pen, and I got him to copy it for me.

83 I will say very frankly I did not know Mr. Townsend was connected with any of the firms representing corporations having an interest in this proposed legislation; otherwise, I would have carried it elsewhere.

Q. What connection did he have with Mr. Lyles's office?

A. In Mr. Lyles's office or partner or something.

Mr. LYLES: He is not in my office. He never has been in my office.

WITNESS: Either in your office or Mr. Clark's.

Mr. LYLES: He is now in Mr. Clark's office, and may have been then.

WITNESS: He was at that time.

Mr. LYLES: I don't know anything about that.

WITNESS: As a matter of fact, I had a conference with him in Mr. Clark's office, or yours?

Mr. LYLES: No.

WITNESS: I had a conference with you and Mr. Clark on the same trip, and he was in one of them?

Mr. LYLES: Not in mine.

WITNESS: I found out he was interested in one of these claims after I had this work done, and I know the attorneys appeared shortly.

At the time the Committee advised me that there was going to be a hearing upon this bill, and I went up as the Attorney General of the State and presented my views of the purpose and effect of that bill.

As for entering into any agreement with Mr. Lyles or anybody else about what the purpose of the Commission was or what my purpose was there was absolutely nothing of the kind.

The bill was there engrossed and before the Committee, and, as a matter of fact, had been printed in the Senate Journal some days before that, and anyone who desired a copy of it had the opportunity to get a copy of it and read it, and they had an opportunity to get it out of the Senate Journal where it had been

84 printed in full, and I think it had been printed in the House Journal also, and I expressed the opinion there to Mr. Lyles that the bill would not prevent, and was not intended to prevent, the hearing of his case on appeal by the Supreme Court, and that if the Supreme Court should render a decision reversing the findings of the State Dispensary Commission, that I felt sure that whether the State Dispensary Commission could be forced to return the money or not, that they would return it; that they would plead no immunity from suit or anything of that sort on account of repre-

senting the State, and that the Glass Company would get whatever money the Supreme Court decided it was entitled to.

There was no other statement as to the effect the bill would have with regard to the Glass Company.

Mr. Lyles, I think, probably left about that time, and Mr. Clark argued against a favorable report on behalf of Lanahan & Sons, and I expressed surprise at that time inasmuch as Lanahan at that time had offered to forfeit its claim, abandon its appeal, and pay something like \$9,000.00 in addition.

Mr. ROBINSON: We object to anything as to Lanahan as irrelevant. Taken subject to objection.

Then WITNESS: And we discussed the question of the bill being confiscatory and all that sort of thing, which was urged, and I argued that I saw no reason why they should be interested in something where they acknowledged liability, and were offering to pay.

As to the effect of the bill I don't think any person of ordinary intelligence could have read that bill, or the Act which finally passed, and failed to have recognized that its purpose was to take charge of such money in the County Dispensaries as was apparently due these various houses that the State Dispensary Commission had found were due and owing the State.

It was in every draft of the Act that was made, and I do not think Mr. Lyles was lured into any false position by anything that was said. He could not have understood that it was an agreement which I undertook to enter into for the State or the Commission.

It was simply an argument before that Senate Committee, I advising a favorable report on that bill, and they opposing it. In fact, I think Mr. Lyles finally withdrew opposition when he learned that his appeal was not affected by it.

I will say that any objection to that bill cannot be upon the *any* ground as to whether or not the Carolina Glass Company could have been defeated in making its appeal, and I gave my statement that I had given my opinion that this Act would not deprive them of this right of appeal, and that even if there was a question along that line, that the State would not make the question, but would allow the appeal to go on undelayed, and that has been my position in this matter throughout.

Mr. ROBINSON: While it was your purpose or view that the Act of 1910 should interfere with or affect the hearing of the appeal, as I understand it, it is your view that the Act was intended to and does affect the remedies for enforcing this claim as well as any other claim that has already been passed on?

A. That would be clearly a matter of my opinion. The Act is there and speaks for itself.

Q. From what I understood you to say, you expressed your opinion just now?

A. I will say this with regard to that, that if they have been defrauding the State, that the Carolina Glass Company should be made to pay the amounts of money out of which they defrauded the

State, and which had been so found, and I believe this, and I tell you now, that Act has made that purpose effective.

86 I will say further in that connection, that I believe the money that is held up in the County Dispensaries, that it will go into the State Treasury where it properly belongs.

In other words, I think that Act has get them before they could run off with the goods. That is my opinion about the matter, but I don't know whether that opinion is worth anything.

87 Mr. LYLES resumes the stand, and testifies as follows, to wit:

I would say this, that what I intended to say, and I think that I did say it, was that there was no understanding or agreement with Mr. Stephenson over the phone except in substance such as is set out in his letter and mine.

I feel sure that Mr. Stevenson was mistaken in his memory as to having said anything about releasing the amounts due to the Glass Company on existing claims. My recollection is clear that nothing whatever was said on that subject. We did not ask him to commit himself, and we did not ourselves say anything to indicate that we would not collect the money, if we could do so.

I never for a moment supposed that Mr. Stevenson would fail to take any steps that he thought he had the right to take as to any claims of the Carolina Glass Company except those for glass to be on that day delivered or thereafter until further notice.

Mr. STEVENSON thereupon took the stand and testified as follows, to wit:

If that is Mr. Lyles's recollection of all that occurred then he and I misunderstood each other entirely which is always possible over the telephone.

As shown by the last clause of my letter and the contemporaneous letter written to my associates I understood thoroughly that until there was a further conference the fund then due would be undisturbed, and I never dreamed that Mr. Lyles or his clients would undertake to collect the same without either asking for that conference, or giving us notice that they would not wait longer for it.

Reference was thereupon adjourned, pursuant to agreement of counsel, until Tuesday, 17 May, at eleven o'clock in the forenoon.

A. D. McFADDIN,
Special Master.

17 May, 1910.

88½

COLUMBIA, S. C., 18 May, 1910.

Pursuant to agreement of counsel a reference herein was this day held herein.

Present: The Attorneys of Record.

Mr. Abney offers in evidence a statement of amounts due the Carolina Glass Company by certain County Dispensaries, signed by W. B. West, Auditor.

Received in evidence as Exhibit C.

Mr. Abney offers in evidence a statement of the amounts paid by various County Dispensaries to the Carolina Glass Company since November 20, 1909, signed by W. B. West, Auditor.

Received in evidence as Exhibit D.

Mr. Abney thereupon announced that the defendants closed.

Mr. Lyles announced that the plaintiff closed.

A. D. McFADDIN,
Special Master.

18 May, 1910.

89

EXHIBIT A.

The following is the testimony of Mr. Lyles to which Mr. Abney objected for the reasons stated on page 13 of the testimony, taken on this separate sheet at the request of Mr. Abney:

I did not regard the judgment of the Dispensary Commission as worth the paper it was written on, and felt no hesitation in advising my clients that so far as that was concerned that they need apprehend no interference in the collection of their moneys, but I realized that the County Dispensary Boards could not pay over moneys until the claims had been approved, especially in what Mr. Abney refers to as dry counties by the State Dispensary Auditor, and I knew that he was subject to the orders of the Governor, and the order which the Governor had issued with reference to regular claims convinced me that if called upon he would issue such an order as to the Carolina Glass Company.

I never once supposed that there was any reason why the Carolina Glass Company should not collect its money, if the County Dispensary Boards were ready to pay it.

90

EXHIBIT C.

Statement of Amounts Due the Carolina Glass Company by the Following County Dispensary Boards.

County.	Amount due Nov. 20, 1909.	Amount due 23 Feb., 1910.	Amount due 26 Feb. 1910.	Sales from 20 Nov., 1909, to 26 Feb., 1910.
Rutherford	3,363.21	\$4,963.13	\$4,963.13	\$6,373.28
Orangeburg	\$1,399.51			
Abbeville	572.81			
Kershaw	926.90			
Fairfield	998.13			
Clarendon	96.47	96.47	96.47	
Bamberg	801.07			
Colleton	470.38			
Barnwell	323.19			
Georgetown	44.51	660.68	660.68	660.68
Beaufort				559.40
Sumter	386.12			
Laurens	1,039.84			
Aiken		727.95	727.95	4,319.08
Total	\$10,420.14	\$6,448.23	\$6,448.23	\$11,912.44

NOTE.—There were no sales made between Feb. 23 and Feb. 26.

Respectfully submitted,

W. B. WEST, *Auditor.*

91

EXHIBIT D.

County.	Date.	Amount.
Abbeville	Dec. 3,	\$572.81
Bamberg	Dec. 1,	801.07
Barnwell	Dec. 1,	323.19
Colleton	Dec. 1,	470.38
Fairfield	Jan. 8, 1910.	996.13
Kershaw	Dec. 1,	926.90
Laurens	Jan. 11, 1910.	1,039.84
Sumter	Dec. 31,	386.12
Williamsburg		
Orangeburg	Dec. 13,	1,399.51
Berkeley	Oct. 19,	54.00

W. B. WEST, *Auditor.*

92 STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910, In the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
vs.
W. J. MURRAY et al., Defendants.

Master's Report.

To the Supreme Court of the State of South Carolina:

I, the undersigned A. D. McFaddin, Special Master, have to report:

1. Pursuant to an order of reference herein dated and filed 2 May, 1910, and signed by Hon. Ira B. Jones, Chief Justice, wherein it was referred to the undersigned "to take the testimony upon such questions of fact as arise upon the Complaint and affidavits, annexed thereto and the Returns and Answers of the defendants and report the facts to this Court on or before the 19th of the present month," I held two references herein, attended by the co-nsel of record, took the testimony offered, which is herewith reported, and therefrom find as follows, to wit:

2. I find that after the introduction into the General Assembly of the bill which passed under the title of "An Act to Further Provide for Winding up the Affairs of the State Dispensary," approved the 23rd day of February, 1910, the bill was referred to the Senate Committee on Police Regulations, and then that Committee had it up for consideration, its messenger, the Clerk of the Committee, was sent to Mr. Lyles, who was before another Committee of the

General Assembly, and he was informed that the bill was 93 up for consideration, and that the Committee would be pleased to hear from him if he had anything to say in opposition to the bill. Mr. Lyles went before the Committee, and found there, the Attorney General, the author of the bill, Mr. Washington Clark, and Mr. Townsend, the Clerk of the Committee, together with several members of the Committee.

Mr. Lyles was informed of the fact that the bill was up for consideration, and was asked if he had anything to say on the subject. He replied that he had seen the bill, and that his only interest in the subject was as a representative of the Carolina Glass Company. That he, however, did not suppose that the bill was intended to affect the claim of the Carolina Glass Company at all, which was then under appeal to the Supreme Court. The Attorney General replied to the effect that Mr. Lyles was correct in his supposition that the bill would not affect the claim of the Carolina Glass Company; thereupon, Mr. Lyles announced that he had nothing further to say on the subject, and withdrew.

3. The main issue raised in the testimony related to the circumstances under which the letter of Mr. W. F. Stevenson of November

20, 1909, to Mr. William H. Lyles, set out in the Complaint was written. On the 20th day of November, 1909, Mr. John T. Seibels and Mr. William H. Lyles, as Attorneys for the Carolina Glass Company, having seen in the daily papers a statement to the effect that the Governor had ordered certain County Dispensary Boards to hold up the payment of funds due to certain liquor houses, at the request of the Carolina Glass Company called upon his Excellency, the Governor and the Attorney General to ascertain whether any order had been issued directing the said County Dispensary Boards, or any of them, to hold up the sums due and to become due to the Carolina Glass Company. They were informed by the Governor and the Attorney General that no special conference had been had with reference to that Company, and were referred to Mr. W. F. Stevenson as the special counsel having charge of the matter.

94 4. During the same day Mr. William H. Lyles put in a call over the long distance telephone for Mr. Stevenson, then at Cheraw, and before getting in communication with him, wrote the letter, a copy of which is attached to the return of Mr. Stevenson in this case.

After the writing of this letter, a conversation over the long distance telephone was held between Mr. Lyles and Mr. Stevenson, and there seems to be some misunderstanding between the parties as to the effect of this conversation. Mr. Lyles testifies that it was in reference to future shipments entirely, and that there was no agreement or understanding as to the amounts already due by the County Dispensaries to the Carolina Glass Company, and I find as matter of fact that no positive agreement was reached over the telephone, but that the agreement that was made is embodied in the letter of Mr. Lyles to Mr. Stevenson (the substance of which was communicated to him over the telephone) and the reply of Mr. Stevenson thereto (said reply having been written before the receipt of Mr. Lyles's letter), said letter having been promptly received by Mr. Lyles, and became the basis of his action in the matter in controversy.

5. Mr. Stevenson contends that he wrote the letter on the understanding that the bills already due were not to be disturbed until further conference, and that as a result the State's Attorneys acting under that arrangement did not begin proceedings to sequester those funds on behalf of the State. He says he wrote the letter in good faith on that understanding and produces a letter written to his associates, accompanying a copy of the letter to Mr. Lyles, and mailed at once stating that that was the understanding, and that if that was not what Mr. Lyles had agreed upon, there had been no agreement between them and the letter was written under a misapprehension such as might occur over a telephone, and I find as above indicated
95 that the minds of the parties did not meet in this conversation.

6. I find that on the 20th day of November, 1909, at the time of the correspondence and conversation above referred to, there was due to the Carolina Glass Company by several of the County Dispensaries the sum of \$10,420.14, as set out in Exhibit B hereto attached, and that since said date several of the Counties have paid

to the Carolina Glass Company various sums aggregating the sum of \$6,915.95, as set out in Exhibit C hereto attached.

All of which is respectfully submitted,

A. D. McFADDIN,
Special Master.

19 May, 1910.

96 *Defendant's Exceptions to Master's Report.*

The defendants except — the report of the Master herein upon the following grounds:

1. The Master erred in finding and holding that the Attorney General, at the hearing upon the bill in question before the Senate committee, assented to the view expressed by Mr. Lyles as attorney for plaintiff that the bill was not intended to affect the claim of the Carolina Glass Company at all. It is respectfully submitted that the overwhelming testimony shows that at said hearing before the Senate Committee the Attorney General expressed the opinion that the bill would not affect the appeal of the Carolina Glass Company then pending in the Supreme Court.

2. The Master erred in finding and holding that there was no agreement entered into by and between Mr. Lyles as attorney for the plaintiff, and Mr. Stevenson as attorney for the State Dispensary Commission. It is respectfully submitted that he should have found from the testimony that an agreement was entered into by and between said attorneys whereby it was stipulated and understood that the Carolina Glass Company should not collect or in any wise disturb the funds then due it by the several county dispensary boards in consideration of the promise of Mr. Stevenson, not to interfere with monies which might thereafter become due and payable by county dispensary boards for glass ware thereafter to be sold to such boards by plaintiff.

3. The Master erred in failing to find that the status of the funds in the hands of the several county dispensary boards due the Carolina Glass Company on the 20th day of November, 1909 should not be disturbed was a consideration of the letter and a part of the agreement between Mr. Lyles and Mr. Stevenson, and that the Glass Company should not have collected the same without a further 97 & 98 conference with Mr. Stevenson.

[Endorsed:] State of South Carolina. In the Supreme Court, April Term, 1909. Before the State Dispensary Commission. In the matter of the claim of Carolina Glass Co., vs. State Dispensary Commission. Exceptions to Master's Report. Copy.

CAROLINA GLASS CO.
v.
STATE OF SOUTH CAROLINA.

CAROLINA GLASS CO.
v.
STATE DISPENSARY COMMISSION.

1. State Dispensary Commission.—Statement by a member of a commission authorized to pass on an account against the State to Counsel in the beginning of the argument, that his impression from reading the evidence was that the claimant owed the State and he wished to hear argument on that point, does not show the commissioner was prejudiced against appellant's claim.

2. Ibid.—Judgment.—Under the statute creating the dispensary commission, it has the power to ascertain the amount due the State by a claimant, and in arriving at that conclusion it could ascertain if the claimant is due the State anything and state the difference as the result of its finding, although such finding would not have the force and effect of a judgment by a Court.

3. Evidence.—Under the charge of conspiracy to defraud the State, testimony that claimant had sold glass to others in smaller quantities for less than it sold to the State, and that lower bids had been rejected by officers of the State, is competent and relevant.

4. State Dispensary Commission — Constitutional Law.—The Legislature has the power to confer on the State dispensary commission authority to collect from the county dispensaries any funds in their hands due parties who are indebted to the State by reason of transactions with the State dispensary, and the Courts have no power to interfere.

5. Ibid.—Ibid.—The Legislature has no power under the Constitution to authorize a commission to pass final judgment on the claim of the State against a citizen, and so much of the act of 1910, 26 Stat., 876, as authorizes the State dispensary commission to make such judgment, is unconstitutional and void, and so also is so much of the act as attempts to create a lien by such judgment on the property of the citizen.

6. Rehearing refused.

Appeal by the Carolina Glass Co. to This Court from the Decision of the State Dispensary Commission and Action for Injunction by Same Corporation Against the State Dispensary Commission.

J. Fraser Lyon, Attorney General; B. L. Abney, W. F. Stevenson and Anderson, Felder, Rountree & Wilson, heard together here.

The decision from which the appeal is taken is:

"STATE OF SOUTH CAROLINA,
County of Richland;

"In the Matter of the Claim of THE CAROLINA GLASS COMPANY
AGAINST THE STATE DISPENSARY OF SOUTH CAROLINA.

"The foregoing matter having come on for a hearing before this Commission, and evidence having been taken for and against the claim made by said Carolina Glass Company against the State Dispensary, and after hearing the argument of the counsel representing said claimant and counsel representing the interests of the State.

"This Commission, exercising its powers under and by virtue of an Act of the General Assembly of the State of South Carolina approved February, 1907, and Acts amendatory thereto, find as follows:

First. "That the Carolina Glass Company was organized during the summer of 1902 in pursuance of an agreement which had been made between its promoters and certain members of the Board of Directors of the South Carolina State Dispensary whereby it was intended that the said Carolina Glass Company should manufacture such glass as the Board of Directors of the State Dispensary might agree to purchase, and that awards for the purchase of glass to be used by said State Dispensary should be made exclusively to the Carolina Glass Company; and that said officers and promoters of the said Carolina Glass Company and said Board of Directors 101 or some of them entered into a conspiracy to defraud the State of South Carolina by preventing and defeating all competition in the sale of glassware needed, used or purchased by the State Dispensary, and did in fact destroy all such competition.

Second. "That in pursuance of this understanding and agreement the said Carolina Glass Company bid (in September, 1902) to furnish fifty cars of glass bottles at prices ranging about ten per cent. in excess of the prices that were then being paid by said State Dispensary to Flaccus & Company, with whom the State Dispensary then had a contract, a large part of which was still unfulfilled; and notwithstanding this fact and the further fact that at the same time other bids were filed from other reputable houses at lower prices, said Board of Directors awarded the contract to said Carolina Glass Company at those prices; that on or about December 3, 1902, the said Carolina Glass Company entered into an agreement with said Flaccus & Company under and by virtue of which the Carolina Glass Company purchased the contract of said Flaccus & Company and agreed to assume its full and complete performance, and also by the terms of said contract purchased from said Flaccus & Company the special moulds needed to manufacture the special bottles required under the rules of the Board of Directors of the State Dispensary and other material used in connection with their manufacture and packing; that the Board of Directors of the State Dispensary thereupon ratified the transfer of this contract from Flaccus & Company to the Carolina Glass Company and there was at the time the same was purchased twenty-two cars of glass still to be delivered under its terms; that thereafter said Carolina Glass Company did not deliver any glass

whatever to the State Dispensary as being manufactured under the terms of the Flaccus contract, nor at the price named in the Flaccus contract, but continued to manufacture glass under the award which has been made to it under its bid filed in September, 1912, 102 until in March, 1903, another award was made by said Board of Directors of the South Carolina Dispensary to said Carolina Glass Company at substantially the same prices, although at that time its own contract made in September, 1902, had not been fully executed and no part of the remaining cars of glass called for under the Flaccus contract had been manufactured or delivered, and notwithstanding the further fact that there were several bids made for the manufacture and delivery of glass under the terms and conditions imposed by the Board of Directors of the State Dispensary for much lower prices and for goods of just as good quality, the said bid of the Carolina Glass Company being then the highest bid made for the furnishing of glass with the exception of a bid by Flaccus & Company, which was a few cents higher than that of the Carolina Glass Company, and which the Commission finds was a dummy bid, not intended to be accepted, but made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass Company that the former would not compete for business with the State Dispensary but would file this bid as a blind; said Flaccus & Company having no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary.

Third. "That for several quarterly periods following that of March, 1903, bids were invited for glass to be furnished to the State Dispensary and other bidders filed bids besides the Carolina Glass Company, all of which were lower in price (though for goods equal in quality) than those proposed at the same time by the Carolina Glass Company, and that some of the bids were suppressed by said Board of Directors, with the consent of the Carolina Glass Company, so that no entry or record was made upon the books of said Board of Directors of the State Dispensary in regard thereto; that notwithstanding this, awards in each instance were made to the 103 said Carolina Glass Company and purchases made from it at the higher prices named in their bids.

Fourth. "That after December 3, 1902, and until the early part of the year 1906, when pursuant to a concurrent resolution of the Senate and House of Representatives of the State of South Carolina, the existing contract between the State Dispensary and the Carolina Glass Company, as to unfilled portions thereof, were canceled, the said Carolina Glass Company, by and with the aid and assistance of the Board of Directors of said State Dispensary and in furtherance of the conspiracy already formed to destroy and prevent all competition in the sale of glass to said Dispensary, secured and maintained a complete monopoly of all the business in that commodity that was done with said State Dispensary; that after the year 1902, and during the remainder of the period above named said Carolina Glass Company secure in the monopoly then created, raised its prices from time to time and were awarded contracts therefor, by said Board of Directors, said prices being at all times much above the fair

market price for the goods sold. Said Board of Directors continuing at nearly every quarterly meeting to award new contracts to said Glass Company at those exorbitant prices, whether the goods were then needed or not, and notwithstanding that said Glass Company had never filled said Flaccus contract until, at the time of the passage of the concurrent resolution by the two Houses of the General Assembly of South Carolina in 1906 canceling the unfilled portions of existing contracts, there were outstanding contracts at exorbitant prices under which there remained to be filled orders for more than two hundred cars of glass bottles of the approximate value of more than \$200,000; by which action on the part of the General Assembly, according to the testimony of one of the officers of said Glass Company, the State saved more than \$50,000, when comparison is made with the prices paid for goods subsequently purchased.

104 Fifth. "That said Carolina Glass Company sold goods of the same quality and size and general character as that sold to the State Dispensary in other States and in other parts of the State of South Carolina at prices which, making allowances for all credits properly to be given to said Carolina Glass Company for the different conditions under which those sales were made, averaged in prices from twenty to twenty-five per cent. below the prices at which the same goods were being sold to the State of South Carolina; the agent of said Carolina Glass Company admitting in his evidence before this Commission that the purchase of the Flaccus contract was made for the purpose of getting rid of a competitor, and that wherever his company sold goods in competition with others they met that competition by selling the goods at lower prices than the same were sold to the State of South Carolina.

"We therefore find that the contracts made between the Carolina Glass Company and the Board of Directors of the State Dispensary were contrary to the laws of the State and against public policy, and for those reasons null and void, and that the said Carolina Glass Company should not, as a matter of strict law, be entitled to recover any sum of money from the State of South Carolina on account of said contracts, even if the State had no offsets against them whatsoever; but the Commission further finds that it should determine the matter on equitable principles and fix the matter of liability on a 'quantum meruit' basis and that the prices at which the Carolina Glass Company sold to the State Dispensary the glassware manufactured by it ranged throughout the entire period of their transactions with the State Dispensary, except for the years 1906 and 1907 at about ten per cent. above the fair and reasonable market price for said goods. The Commission finds that the total amount of sales, after making all proper corrections therein, made by the Carolina

105 Glass Company during the entire period of the transactions with the State Dispensary up to the time it was abolished, was \$613,437. Of this amount the sum of \$99,108 was for goods sold during the year 1906 and the short period during 1907 during which that Dispensary was conducted, so that the total sales made by the Carolina Glass Company during the years preceding the year 1906 aggregated \$514,329.90.

"The Commission finds that beginning early in the year 1906, as the result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina and the resolutions adopted by the General Assembly relating especially to the contracts with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did lower its bids to prices which during that year and the short period of 1907 during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906 the overcharges made in excess of the fair and reasonable market price for the goods sold was \$51,432.99, which should be and is hereby offset against the claim in favor of said Carolina Glass Company, to wit, its claim for \$23,013.75, which, being deducted from the amount of said overcharges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of \$28,419.24.

"Whereupon judgment is rendered in accordance with the foregoing findings."

Messrs. D. W. Robinson and W. H. Lyles for plaintiff in first stated case. Mr. Robinson cites: Special tribunals are strictly confined to powers granted: 1 Bail. 460; 12 S. C. 214; 112 U. S. 306; 8 How. 449; 6 Wheat. 127; 1 Hill 53; 1 McClover 16; 49 Cal. 525; 5 Rand. 636; 66 U. S. 488; 85 C. C. A. 38; 1 Strob. 1; 6 Wheat. 127; 79 S. C. 320. Under the Constitution all judicial power 106 is vested in the Courts: 79 S. C. 334; 213 U. S. 172; 73 U. S. 247. What is the Dispensary Commission? 12 S. C. 111; 12 S. C. 244. Alleged overcharge is not a counterclaim: 34 Cyc. 626, 625, 623, 642, 643; 37 S. C. 593; 19 Cyc. P. & P. 726; 1 McC. 491. Notice or pleading of counterclaim is necessary: 15 S. C. 461; Pom. on Rem. 660. The plaintiff is deprived of due process of law: 18 How. 272; 110 U. S. 516; 111 U. S. 701; 129 U. S. 114; 92 U. S. 480. Right of State to sue: 19 Cyc. 726-7; 40 Am. Dec. 373; 41 Am. Dec. 549; 43 N. E. 226; 10 Minn. 39; 106 U. S. 196; 103 U. S. 168. Vested rights and obligation of contracts are impaired by Commission setting up counterclaim: 96 U. S. 595; 13 Rich. 279; 6 How. 327; 83 U. S. 203. Trial by jury is refused: 106 U. S. 412; 11 How. 447; 131 U. S. 32; 8 Wheat. 25. Statute of 1910 is not retrospective and could not operate on plaintiff's claim: 34 S. C. 477; 191 U. S. 552.

Messrs. Lyles & Lyles, Jno. T. Seibels and D. W. Robinson, for plaintiff in second stated case, cite: The Court will apply constitutional provisions to the facts without specific pleading: 12 Ency. P. & P. 1; 16 Cyc. 889; 1 Cranch. 137; 75 U. S. 44; 54 S. C. 1; 63 S. C. 169. The acts of 1907 and 1908 invested the Commission with no authority to consider claims by the State against any person: 25 Stat. 835; 79 S. C. 316; 213 U. S. 151; 59 U. S. 272; 142 U. S. 660; 188 U. S. 505; 213 U. S. 171; 34 Cyc. 625, 626, 642, 643; 37 S. C. 593; 19 Cyc. P. & P. 726; 1 McC. 491; 1 Bail. 121. The act of 1910 violates Sec. 1 of Art. V of the Constitution, because it invests the Commission with jurisdiction to consider claims by the State against

an individual or corporation: 59 S. C. 110; 21 S. C. 560; 1 Cranch. 137; 36 L. R. A. 824; 2 Shars. Black. 24; 12 S. C. 111; 16 S. C. 244; 17 S. C. 80; 11 Fed. Cas. 5872; 14 Fed. 177; 36 L. R. A. 824; 59 U. S. 272; 23 Ency. 485; 48 Am. Dec. 339; 13 Am. Dec. 107 615; 47 L. R. A. 631; 2 Hill (N. Y.) 159; 40 Am. Dec. 378; 41 Am. Dec. 549; 43 N. E. 226; 10 Minn. 39; 103 U. S. 168.

This act also violates those provisions of the Constitution requiring the three branches of government to be kept separate: 103 U. S. 168; 98 Fed. 11; 335; 54 S. C. 1; 18 How. 272; 15 L. Ed. 377; 98 Fed. 346; 26 L. Ed. 387. It also violates the due process and equal protection clauses of the State and Federal Constitutions: 15 L. Ed. 376; 110 U. S. 516; 111 U. S. 701; 187 U. S. 51; 129 U. S. 114; 92 U. S. 480; 139 U. S. 462; 134 U. S. 418; 169 U. S. 466; 98 Fed. 335; 5 Johns. 477; 66 S. C. 194; 72 S. C. 9. The act is also an arbitrary discrimination: 63 S. C. 169; 66 S. C. 37; 166 U. S. 150; 75 S. C. 62; 207 U. S. 20. To apply to plaintiff's claim the act must be held retroactive, which cannot be gathered from its terms: 34 S. C. 477; 55 S. C. 302; 60 S. C. 70; 18 S. C. 481; 22 S. C. 504; 54 S. C. 251; 116 N. W. 98; 89 S. W. 399; 106 N. W. 566; End. on Int. of Stat. 271; 129 U. S. 36; 52 S. E. 821; 112 U. S. 536; 191 U. S. 552. If retrospective, the act is void: 13 Rich. 279; 34 S. C. 477; 22 S. C. 504; 9 S. C. 293; 18 S. E. 704. It impairs obligation of contracts: 96 U. S. 595; 6 How. 327; 4 L. R. A. N. S. 1077; 8 Wheat. 92; 2 How. 612; 30 S. C. 381; 75 S. C. 34; 18 S. E. 704; 3 L. R. A. N. S. 954; 147 Mich. 493; 83 U. S. 203; 9 Fed. Stat. Ann. 337. It takes away trial by jury: 106 U. S. 412; 11 How. 447; 131 U. S. 32; 8 Wheat. 28. It takes away right of appeal: 81 S. C. 534; 131 U. S. 22; Con. Art. V, Sec. 4; 207 U. S. 35. A Legislative act cannot affect judicial proceedings already pending, especially where judgment has been rendered: 26 S. E. 592; 18 S. E. 704; 12 Am. St. R. 352; 8 Fed. Stat. Ann. 849-50; 44 Ala. 418; 1 L. R. A. 530. If the letter of Mr. Stevenson is not a contract it is an estoppel of the State to collect amounts due plaintiff from county dispensaries: 100 U. S. 578; 11 How. 325; 39 S. C. 435; 72 S. C. 47; 32 S. C. 511; 27 S. C. 232; 10 Wal. 604; 96 U. S. 716; 17 Wall. 32.

108 Messrs. J. Fraser Lyon, Attorney General; B. L. Abney, W. F. Stevenson and Anderson, Felder, Rountree & Wilson, contra, cite, in the first named case: The powers and duties of the Commission: 25 Stat. 835, 1289; 79 S. C. 316; 12 S. C. 111. If the agent of the State makes a secret agreement with the vendor against the interest of the State, the vendor will not be permitted to recover: 113 N. Y. S. 737; 129 U. S. 643; 119 Fed. 279; 46 Pac. 123; 71 N. E. 916; 174 U. S. 639; 24 N. E. 661. Contracts against public policy and contrary to statute as to consideration or thing to be done are void: 21 Wall. 441; 2 Wall. 45. The State is never estopped by the unauthorized acts of its officers: 60 S. C. 465. Nor is it estopped from recovering sums of money obtained from its officers in fraud: 41 So. 575; 117 La. 286.

The opinion in this case was filed November 17th, but held up on petition for rehearing until

NOVEMBER 29, 1910.

The opinion of the Court was delivered by Mr. Justice HYDRICK:

The above stated cases were heard and will be considered together, as the second grows in part out of the first. At the session of 1905, a committee of the legislature was appointed, under a concurrent resolution, to investigate the affairs of the State Dispensary, 24 Stat., 1220. The resolution was very broad in its scope, and authorized the committee, among other things, to investigate all transactions connected with the dispensary and its management, present and past, and the connection of any of its officers with any corporation, concern or individual, contracting for the sale of goods to the State for the dispensary, and ascertain the financial standing of the business.

The investigations of the committee resulted in an act, passed in 1907, authorizing the appointment of a commission, to be known as the State Dispensary Commission, whose duty it was to 109 close out the entire business and property of the State Dispensary, collect all debts due, and pay "all just liabilities" of the State growing out of said business. The Commission was given "full power and authority to investigate the past conduct of the affairs of the dispensary." It was also clothed with all the power and authority conferred upon the committee, which had been appointed under the resolution above referred to. 25 Stat., 835. The act of 1907 was amended in 1908 so as to give the Commission "full power to pass upon, fix and determine all claims against the State growing out of dealings with the dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it, and no other." 25 Stat., 1289.

Appellant presented to the Commission a claim for \$23,013.75, as the balance due it by the State for bottles and demijohns furnished to the dispensary under contracts made with the Board of Directors from and including April, 1906, until the business was closed out by the Commission. Appellant had also furnished the dispensary practically all the bottles and demijohns used since about December, 1902; but all accounts prior to April, 1906, had been settled.

Upon the filing of this claim, the Commission went into an investigation of all past dealings of appellant with the dispensary; and after hearing a great deal of testimony and argument thereon, rendered its decision, dated November 17, 1909, which will be set out in the report of the case.

The conclusion and finding of the Commission was that, in pursuance of a conspiracy between some of the directors of the dispensary and some of the appellant's officers or agents to defraud the State whereby legitimate competition was destroyed, appellant had a monopoly of the business of furnishing glass to the dispensary from the date of its beginning business, in 1902, until April, 1906; and that the prices paid it for glass during that period exceeded the fair market value thereof by \$51,432.99. Therefore, allowing appellant's claim of \$23,013.75, the Commission found that appellant was indebted to the State in the sum of

\$28,419.24, the difference between the amount of its claim and the sum it had fraudulently collected from the State.

From that decision this appeal was taken, under the provisions of the statute, giving every claimant the right of appeal to the Supreme Court, "as in cases at law." Appellant concedes that the jurisdiction of this Court is limited in such cases to a review of alleged errors of law. Many of the exceptions question the findings of fact on the ground that there is no testimony to support them. If that were so, they might be corrected as errors of law. But, after a very careful consideration of the testimony, we have failed to discover that any of the findings of fact are wholly unsupported by testimony. It would unnecessarily prolong this opinion to discuss in detail the evidence, which covers 650 printed pages, to point out that which tends to support the findings of the Commission, which are material to its decision. It would be an unprofitable task. Besides, any expression or opinion by this Court upon the sufficiency of the evidence upon any point might result in prejudice to others whose rights may be affected by the same testimony and facts inferable therefrom in other litigation which may grow out of the transactions in question. In this connection, it may not be out of place to say that we do not agree with appellant's counsel that the finding of the Commission of a conspiracy to defraud the State is an impeachment of the character for honesty and integrity of every stockholder, director and officer of the Company. Corporations, like individuals, are bound by the acts of their agents within the scope of their authority, even those fraudulently done; and while the legal consequences of such acts must be visited upon the principals, it by no means follows that the principals can justly be charged with guilty participation in

them. It is but fair to say that there is not a particle of testimony tending to show that some of the stockholders, directors and officers of the company had any knowledge of the transactions which fell under the condemnation of the Commission.

The first exception alleging error of law is that after the testimony had been taken, and the argument was about to commence, one of the commissioners stated to appellant's attorney that, from his recollection and knowledge of the testimony, there was a doubt in his mind whether the State owed appellant anything; that he was under the impression, from the testimony, that it showed that appellant owed the State a large sum of money on account of overcharges; and asked that his argument be directed to that point. It is contended that this statement showed that the mind of the commissioner was prejudiced against appellant's claim, and that he was thereby disqualified to participate in the deliberations of the Commission. Such a contention is clearly untenable. The Commissioner distinctly stated that the impression made upon his mind was from reading the testimony. Ordinarily, the mind of every intelligent man is impressed one way or the other as to the weight of evidence and its sufficiency to establish the facts in issue as he hears or reads it. There is no impropriety in the trier of facts stating to counsel the impressions so made upon his mind, that he may have the opportunity of so presenting the evidence as to remove the impression, if

possible. It is common practice for Judges to state to counsel the bent of their minds as to the law or facts, so as to direct argument to the questions involved, and we have never heard the practice questioned or condemned. On the contrary, it is a distinct advantage to counsel in arguing a cause.

The next contention of appellant is that the Commission is not a Court, but a special tribunal of limited power, and that it exceeded its authority in undertaking to fix and determine appellant's liability to the State, and then set off its claim against the liability so fixed. It is conceded that the Commission is not a Court, though its duties necessarily involve, to some extent, the exercise of judicial functions, as is always the case where judgment and discretion are to be exercised. It was created under Section 2 of Article XVII of the Constitution, which provides that "the General Assembly may direct by law in what manner claims against the State may be established and adjusted." State v. Dispensary Commission, 79 S. C. 316, 60 S. E. 928. Of a like nature was the "Court of Claims," created under a similar provision of the Constitution of 1868. *Ex parte Childs*, 12 S. C. 11. This being so, the Commission is limited to the exercise of such powers as are expressly conferred upon it by the statutes, and such as are necessarily implied from those conferred. This is true even of Courts of special and limited jurisdiction. *McKensie v. Ramsey*, 1 Bail. 460. It is contended that authority "to pass upon, fix and determine all claims against the State" does not include authority to fix and determine claims in favor of the State against others. Such a construction of the statutes is too narrow, and unwarranted from their manifest purpose and intent. The Commission was authorized and directed to determine what were the "just claims" against the State growing out of the business, and to that end it was directed to investigate all transactions with the dispensary, past and present. For what purpose? Evidently to enable it to decide what were the just liabilities of the State. And how could it decide what was the just liability of the State to a claimant without ascertaining what was the just liability of the claimant to the State growing out of his dealings with the dispensary? The determination of the one necessarily involved the other.

The question, therefore, whether the Commission had authority to entertain a "set off" or "counterclaim" in favor of the 113 State against a claimant, in the technical sense in which those terms are used in legal proceedings is not germane or material to the present inquiry. To what purpose should the Commission investigate, unless it announced the result of its investigation? We see no error, therefore, in the Commission stating its findings as the result of its investigation.

The findings of the Commission, however, are controlling only in its determination of the non-liability of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper Court to recover the amount found by the Commission to be due it by appellant.

The exceptions assigning error in admitting in evidence certain testimony which had been taken by the investigating committee, appointed under the resolution hereinbefore referred to, cannot be sustained; because the record fails to show that objection was made to its introduction; on the contrary, it appears that it was introduced by consent. Besides, appellant was represented by counsel before the committee and cross-examined the witnesses, except one, whose affidavit was admitted without objection; and after the testimony was admitted, the Commission offered appellant opportunity to introduce testimony in rebuttal or to impeach the witnesses.

The next assignment of error is in admitting testimony to show that other manufacturers of glass had put in bids with the directors of the dispensary which were lower than the bids of appellant, which were accepted by the directors; and that appellant had, during the time it was furnishing the dispensary, sold bottles of the same kind to other buyers in smaller quantities at lower prices, because in dealing with the other buyers it had to meet competition, the contention being that appellant's bids having been accepted and contracts

114 awarded upon them, such testimony was irrelevant. The testimony was clearly relevant, because it tended to prove the charge of a conspiracy to defraud the State. If it be true, as contended, and as some of appellant's witnesses testified, that these smaller quantities were sold at lower prices merely to get rid of its remnants or surplus product, which was a very small per cent. of its output, that was a fact for the consideration of the Commission in determining the weight and sufficiency of the evidence, but it could not affect its relevancy.

We proceed next to dispose of the issues raised in the second case stated at the head of this opinion. These arise principally out of an act approved February 23, 1910, and what was done by the defendants under the provisions of that act, which, it will be noted, was passed subsequent to the decision of the Commission upon the claim of the plaintiff. The provisions of the first five sections of the act pertinent to this case are, in substance: That, in addition to the powers conferred by all previous acts, the Dispensary Commission shall have power to pass upon, fix and determine claims of the State against any person, firm or corporation heretofore doing business with the State Dispensary, and settle and receipt therefor; that the findings of the Commission under its provisions shall be final, and, upon the finding by the Commission that any person, firm or corporation is indebted to the State, the dispensary auditor and officials having charge of the funds of any county dispensary which may be indebted to such person, firm or corporation, shall pay to the Commission the amount so found to be due the State, or so much thereof as the funds in their hands due to such person, firm or corporation will pay, and the receipt of the Commission shall be a sufficient voucher therefor; that the Commission may, by its order, stop the paying out of any funds of any county dispensary by any officer having charge thereof. Sections 7 and 9 of the act are as follows:

115 SEC. 7. "The State Dispensary Commission is hereby empowered to pass all orders and judgments and do any and all things necessary to carry out the purposes of this act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this State, and a transcript of said judgment shall be filed in the office of the clerk of the Court of Common Pleas in each county where any property of such judgment debtor is situated.

SEC. 9. "In all cases pending before the said State Dispensary Commission, upon any claim or claims against any person or persons or any corporation or corporations owning any real estate in any county in this State, the said Commission shall file in the office of the clerk of Court in each county where such real estate is situated a notice of the pendency of such cases, and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State."

Within a few days after the approval of the act, to wit, on February 26, 1910, the Commission, by its attorneys, filed in the office of the clerk of the Court for Richland county, in which county plaintiff owned real estate, a notice, headed or entitled, *The State v. Carolina Glass Co.*, and signed by the Attorney General and other counsel representing the State. The notice was as follows: "Notice is hereby given to all whom it may concern, that the above stated cause has been instituted, and is now pending before the State Dispensary Commission for the recovery against the Carolina Glass

Company of \$29,000.00, the amount which has been found 116 to be due from the said defendant to the State of South Caro-

lina owing to overcharges made by said defendant in selling goods to the State Dispensary, and this notice is given in accordance with the terms of an act of the legislature passed in February, 1910, and duly approved by the Governor." About the same time, notice was served on the plaintiff, pursuant to the provisions of the act, that the Commission would proceed to pass upon, fix and determine the claim of the State against the plaintiff on account of the overcharges growing out of its dealings with the dispensary. Notice was also served on the County Dispensary Board of Richland county, requiring that board to pay to the Commission the amount due by said board to the plaintiff.

Another feature of the case grows out of an agreement alleged to have been made between the attorneys for the plaintiff and the attorney representing the State with regard to payments for shipments of glass made by plaintiff to the county dispensaries after November 20, 1909. At the date of the decision of the Commission on plaintiff's claim, several of the county dispensaries were indebted to plaintiff for glass shipped prior to the decision, and plaintiff was under

contract to make further shipments. But fearing that payment of the amounts due it by the county dispensaries might be stopped by order of the Commission, and being unwilling, in view of the possibility of such action, to make further shipments, without an agreement that payment therefor would not be withheld, the attorney representing the State in the matter of claims against the plaintiff and others for overcharges against the dispensary, agreed with plaintiff's attorney that payments for all shipments made after November 20th would not be interfered with by the Commission. There seems to have been some misunderstanding between the attorneys as to what the agreement was, or as to whether there was any agreement, with regard to the amounts then due the plaintiff for shipments 117 previously made. No steps, however, were taken by the Commission or the State's attorneys to stop the payment of such debts, and plaintiff continued to collect them, as well as those accruing after November 20th.

Upon the filing and serving of the notices above mentioned, this action was commenced in the original jurisdiction of this Court, to enjoin the defendants from ordering the sums due to plaintiff by the county dispensaries withheld or paid over to the Commission, on the ground that the act of the Commission in fixing and determining the liability of plaintiff to the State was an excess of authority conferred by the statutes, and, therefore, null and void, and on the ground that the notice requiring the county board to pay to the Commission the amounts due by it to plaintiff, in so far as it affected shipments made subsequent to November 20th, was a violation of the agreement with plaintiff's attorneys. Plaintiff also asks that the Commission be enjoined from asserting or claiming a lien upon its real estate in favor of the State by virtue of the notice filed with the clerk of Court for Richland county, on the ground that the sections of the act giving the State such lien upon the judgment of the Commission, or the right to acquire it by reason of such judgment, are unconstitutional.

Under the provisions of the Constitution (Art. VIII, Sec. 11) and statutes (25 Stat., 463) the county dispensaries are conducted "under the authority and in the name of the State." Therefore, the officers in charge of them are agents of the State and the funds arising from the sale of liquors through them are the funds of the State, and the debts due for goods sold to them are the debts of the State. In exercising the powers conferred upon it by the legislature, the Dispensary Commission is also the agent and representative of the State, "subject to no interference, except that of the General Assembly itself," and a suit brought against it is, in effect, a suit against the State. *State v. Dispensary Commission*, 79 S. C. 316, 329, 60 S. E. 928. As the State cannot be sued without its 118 consent, no Court has power to interfere with or direct the disposition of the State's funds in the hands of its agents, unless it appears that they are acting without authority of law, or are refusing to recognize and obey the law to the detriment of private rights. In *State v. Dispensary Commission*, supra, at page 325, this Court said: "The General Assembly may require the public

funds, or any part of them, to be put in any place or with any person it sees fit; and there is no limit to its power in imposing conditions and conferring discretion on its fiscal agent as to the disbursements of these funds to its creditors. When a discretion is conferred by the State, no Court can supplant the agent of the State and substitute for his discretion its own judgment." In ordering the funds in the hands of the officers of the county dispensaries due to the plaintiff turned over to itself, the Commission acted within the limits of its authority and discretion conferred upon it by the Legislature, and this Court has no power to interfere. From the foregoing, it will be seen that it is unnecessary to inquire or decide whether there was an agreement between the attorneys for plaintiff and the attorneys for the State, as to the collection of the amounts due plaintiff from the county dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it has been violated. The Dispensary Commission is the sole arbiter of the rights of the plaintiff, if it has any, with regard to that matter.

The claim that the State has a lien upon the real estate of the plaintiff by virtue of the provisions of Section 7, and by virtue of the notice filed with the clerk of Court under the provisions of Section 9 of the act of 1910, presents a serious and delicate question. Unless the provisions of Section 7 must be construed to be retroactive, the lien cannot be claimed under this section. The rule is too well

settled to require discussion that a statute will not be construed so as to have retroactive effect, unless such construction is required by its express terms, or by a necessary implication. There are no words in the act expressly giving any of its provisions retroactive effect, and there is no necessary implication from the language used that the Legislature intended that it should have such effect. Therefore, when the Legislature said, in Section 7, that "all judgments rendered by them (the Commission) for any claim due the State shall be a lien on the property of the judgment debtor situated within the State," it meant all judgments rendered after the passage of the act. As the only judgment, in any sense of the word, rendered by the Commission against the plaintiff was rendered before the passage of the act, no lien upon the property of the plaintiff was given or intended to be given by virtue of that judgment.

The Constitution ordains (Art. I, Sec. 14) that "the legislative, executive and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." This language is as strong as it is simple and clear. The Legislature therefore cannot assume to itself the exercise of judicial powers. *Seegers v. Parrott*, 54 S. C. 1. Nor can it confer "judicial powers," in the sense in which those words are used in the Constitution, upon any other body than the Courts mentioned and provided for in Section I, Article V, of the Constitution, which provides that "the judicial power of this State shall be vested in" the Courts therein specifically mentioned and provided for. The few instances in which judicial power is vested

elsewhere are provided for in the Constitution itself, and with these few exceptions, the whole of the element of sovereignty known as judicial power was vested by the people in their Courts, and none of it was left to be lodged elsewhere. In fact, every person exercising the functions of either of the other departments of the government are forbidden to assume or discharge those vested in the Courts. We have already seen that the Dispensary Commission is not a Court within the meaning of the judicial article of the Constitution, but is a special tribunal, created under the power of the Legislature to investigate the financial affairs of the State, and that provision of the Constitution which authorizes the Legislature to direct by law how claims against the State shall be established and adjusted.

It follows that any attempt to confer upon the Commission judicial powers, except in so far as the exercise of such powers may be necessarily incident to the duty of investigating and ascertaining the truth with respect to the management of the dispensary, and the just liabilities of the State growing out of dealings with the dispensary, is violative of the Constitution. The exercise of judicial functions, or quasi judicial functions, is often necessary, as an incident, to the exercise of the powers conferred by the Constitution upon the other co-ordinate branches of the government, as in all cases where the exercise of judgment and discretion are required. But this is not the judicial power vested in the Courts. It would be difficult to give an exact definition of the words "judicial power" as used in the Constitution, which would be applicable to all cases which might arise, and we shall not attempt it. The lines of demarcation between the powers of the three departments of government are often shadowy and illusive; but in the main they are clear, well defined and well understood.

The Constitution assumed the existence of an organized society, and when it vested the judicial power in the Courts, it had reference to the judicial power then existing, and such as the people then understood to be vested in and exercised by the Courts.

There can be no doubt or difficulty therefore as to those powers, which, from the earliest periods in the history of our constitutional forms of government, have been exercised by the Courts in 121 the due and orderly interpretation and administration of the law. It has always and universally been deemed the prerogative of the Courts to enforce and protect rights, prevent and redress wrongs, punish offenses against the public, and determine the rights, obligations and liabilities of persons arising out of their relations to and dealings with each other. It would not be contended for a moment that the Legislature could, even upon the fullest, fairest and most deliberate investigation, after due notice, pass a valid act declaring that a particular individual is indebted to the State in a given amount, and by legislative fiat create a lien upon his property. Such an act would not only be an unwarranted usurpation of judicial power, but would also be an infringement of the constitutional guaranty that no person shall be deprived of his property without due process of law or be denied the equal protection of the law. If, then, the Legislature itself could not pass such a judgment, it cannot

confer upon a commission the power to do so. The creature cannot be greater than the creator. The investigation of the dealings between the plaintiff and the State, the hearing of evidence and argument upon the facts and the law applicable thereto, and the determination of the rights of the plaintiff and the State growing thereout are so clearly an exercise of judicial power that the bare statement of the proposition is sufficient without argument to illustrate its truth. It was held to be such by this Court in *State v. Dispensary Commission*, *supra*, where, at page 333, the Court said: "Their (the Commission's) discretion is a judicial discretion, and their action, without respect to the validity of claims, judicial action." So long, therefore, as the action of the Commission was confined to the investigation of all dealings, past and present, with the dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the Constitution for the Legislature to provide by law how claims of the State against others shall be established or adjusted, except through the Courts. We conclude, therefore, that in so far as the act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff, it is unconstitutional, null and void. And, as the lien which the act attempts to create is based upon the unauthorized act of the Commission, it is likewise null and void.

The judgment of this Court is that the decision of the Commission upon plaintiff's claim against the State be affirmed, and that the defendants be enjoined from asserting or claiming any lien upon plaintiff's property under or by virtue of the notice filed in the office of the clerk of Court for Richmond county, and that said notice be cancelled of record.

NOVEMBER 29, 1910.

Per Curiam:

On consideration thereof, the within petition is dismissed.

123 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY
Patton and J. S. Brice, Constituting the State Dispensary Com-
mission; J. Fraser Lyon, Attorney-General of the State of South
Carolina; W. F. Stevenson, B. L. Abney and Clifford L. Anderson,
James L. Anderson, Thos. B. Felder, Jr., Daniel W. Rountree,
and Chas. G. Wilson, Constituting the Firm of Anderson, Felder,
Rountree & Wilson, Defendants.

Petition.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the State of South Carolina:

The petition of Carolina Glass Company would respectfully represent:

That your petitioner is advised, by its Counsel, that the Decree which this Honorable Court has made, upon its application for an Injunction to restrain the Defendants above named from in any manner demanding or receiving the sums of money due to your Petitioner by the several County Dispensaries, or any of them, and from in any manner interfering with the payment of any such sum, or sums due by the said Dispensaries to your Petitioner, has in effect establish- that your Petitioner has no relief against the Defendant above named to prevent such interference upon the theory that the funds of the said several county Dispensaries are funds of the State of South Carolina and that the State of South Carolina has a right to order the change of the custody of such funds and the dis-

position thereof as it may deem proper. Your Honors will see,
124 from an examination of the pleadings in this cause, that it is an admitted fact that the several amounts stated were due from the respective County Dispensary Boards to your Petitioner at the time of commencing this action.

And your Petitioner is advised, by its counsel, that this Honorable Court seems to have overlooked the effect of the construction which it has placed, in this case, upon the Act of 1910 in holding that the so-called "overjudgment" rendered by the State Dispensary Commission was null and void. And your Petitioner would, therefore, respectfully urge upon this Honorable Court a re-consideration of the case and a re-hearing thereof, in order that your Petitioner may, by its Counsel, present your Petitioner's views of the Act of 1910, as your Petitioner feels that grave injustice has been done to it, in that funds which this Court has decided that the State of South Carolina has no claim upon have been withdrawn from the custody of the County Dispensary Boards and put beyond the reach of your Petitioner.

Your Petitioner would call your attention to the Act entitled "An Act to declare the law in reference to and to regulate the manufacture, sale, use, consumption, possession, transportation and disposition of alcoholic liquors and beverages within the State, and to police the same," approved the 16th day of February, 1907, under which the several County Dispensaries have been established and are operated. And your Petitioner would especially call your attention to the fact that the schemes of the said Act was to make the funds and business of each one of the said several County Dispensaries itself a separate and distinct fund, and to segregate each particular fund from the other funds of the State of South Carolina, and to make such particular fund responsible for the obligations incurred in reference thereto.

Your Petitioner would respectfully refer to Section 6 of the said Act, which reads as follows:

125 "The members of the said County Dispensary Board are hereby declared to be County officers, and are hereby authorized and empowered, under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: Provided, That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made. The mem-

bers of the County Dispensary Board and all Dispensers shall be persons of known moral character and not directly or indirectly applicants for appointment."

Your Petitioner would also call your attention to Section 9 of the said Act, which provides as follows:

"The County Dispensary Board shall, during the first week of each month, make a sworn statement of the receipts, expenditures and liabilities of each Dispensary for the proceeding month, and cause the same to be published once in some newspaper published in the County during the week."

Your Petitioner would also call your attention to the first sentence of Section 18, which reads as follows:

"On the first days of January, April, July and October in every year, the County Dispensary Board shall file with the Clerk of Court a sworn statement of the profits of each Dispensary in the County for the three months preceding said dates, respectively, which shall be recorded by him in a book kept for that purpose, and published forthwith by said Board once in a newspaper published within the County."

And your Petitioner would also call your attention to Section 11 of the said Act, which reads as follows:

"Each Dispenser shall daily deposit, to the credit of the County Board, in a bank designated by the Board, all moneys received by him from sales."

And your Petitioner would respectfully submit that it is apparent by the said Sections, that no part of the funds of the said 126 County Dispensaries could be in any manner diverted or appropriated for any purpose whatever, except for the purpose of satisfying the debts incurred for the purchase of said stock and for the payment of the necessary running expenses of the said County Dispensaries, until after the debts and expenses so incurred had been paid and satisfied.

It will be seen that the State of South Carolina did not assume any general liability for the purchase of goods under the authority of this Act or in anywise pledge its general credit for the payment thereof, but did enter into a contract with those who might sell goods to the said several county Dispensary Boards, that the funds of each and every of the said County Dispensary Boards should be a trust fund, set apart and administered under the terms of the said Act, for the extinguishment, first, of all liabilities that might be incurred for the purchase of stock or merchandise thereunder, and then only for distribution according to the terms of the said act. And your Petitioner respectfully submits that the custody of said funds provides for in said Act *because* itself a part and parcel of the contract entered into between the State of South Carolina and the Seller of merchandise under the said Act.

And your Petitioner submits that, even if the State of South Carolina had intended, by the Act of 1910, to withdraw the funds so to be set aside from the control of the several County Dispensary Boards, she would have had no right to do so, as her action in that regard would have been in violation of Section 10 of Article I, of

the Constitution of the United States, and also in violation of the Fourteenth Amendment of the Constitution of the United States, as well as of Section 5 and 8 of Article I of the Constitution of the State of South Carolina.

Your Petitioner, however, would respectfully urge upon this court that the Act of 1910 was based upon the theory—and only upon the theory—that the State Dispensary Commissioners were authorized and empowered, in addition to the powers theretofore conferred upon them to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations theretofore doing business with the State Dispensary, and to render judgments thereon. And the said Act of 1910 did not in any respect, or in any particular, authorize or empower the State Dispensary Commissioners to interfere with the funds of the several county Dispensary Boards due by them to the persons from whom goods had been purchased, except for the purpose of appropriating the same towards the judgments so found by the said State Dispensary Commission.

And your Petitioner would respectfully submit that this Court, having adjudged that the State Dispensary Commissioners had no jurisdiction to find an overjudgment against your Petitioner or to inquire further as to any obligation of your Petitioner to the State of South Carolina, except in so far as it was necessary to extinguish the claim of your Petitioner against the State, which had been submitted to the said State Dispensary Commissioners and which had been extinguished by their judgment several months prior to their proceedings complained of in this action, and prior even to the passage of the Act of 1910, that the said State Dispensary Commissioners were stripped of all excuse or reason for interfering with the funds so due to your Petitioner as aforesaid; and there was no authority in law for them, in their official capacity, to interfere in any such manner as they have done. And your Petitioner submits that their interference was simply a transgression of your Petitioner's rights and a violation of their official duty, for while they, and each of them, are, jointly and severally liable to your Petitioner under the Constitution and laws of the State of South Carolina and of the United States.

And your petitioner would respectfully call your attention to Paragraph Ten of your Petitioner's complaint in this action, in which it is alleged that the said Defendants were undertaking to proceed under Section 6 of the Act approved in February, 1910, aforesaid, in serving upon the several County Dispensaries 128 mentioned in said paragraph Ten, notices to pay over the funds; and it is admitted in Paragraphs Four and Five of the Answer of Defendants that they were claiming to proceed under the authority of Section 6 of the Act of 1910, they setting up the so-called judgment against your Petitioner in favor of the State of South Carolina as justification of their otherwise unlawful acts.

This being the sole authority—either by general right of the State of South Carolina or by special authority under the Act of 1910—if they were not authorized by Section 6 of said Act, then it is clear

that their action was entirely without authority and could not be justified under color of their several offices.

Section 6 of said Act provides as follows:

"In any and all cases where the State Dispensary Commission has heretofore found any amounts due the State by any persons, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing, and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all county dispensaries heretofore existing, shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State."

Under the decision of this Court in this case upon the appeal of your Petitioner on its claim against the State of South Carolina, this Court has in express terms ruled that the State Dispensary Commissioners had not had authority to render the judgment in question, and that the Act in question could not confer such authority.

Being therefore without justification or excuse for the interference which they have made with the funds of your Petitioner, it is respectfully submitted that the Decree in this case should have gone on and enjoined and restrained them from continuing to interfere therewith, as the action of the Commissioners complained of by your Petitioner without color of law, would be confiscation pure and simple.

_____,
_____,
Attorneys for Petitioner.

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COLUMBIA, S. C., November —, 1910.

STATE OF SOUTH CAROLINA,
Richland County:

Carolina Glass Company, Petitioner above named, by its President, does hereby consent that, if the stay of the remittitur shall be granted, and a re-hearing of the Petition above named shall be granted, it shall be upon condition that the status of the property involved in the case shall not be disturbed until the final determination of the case.

Dated this — day of November, 1910.

STATE OF SOUTH CAROLINA,
Richland County:

I, —, an attorney at law and counselor practicing in the Supreme Court of the State of South Carolina, do hereby certify that I am not concerned in the prosecution of said cause, or in anywise interested therein, and ther, in my opinion, there is merit in the grounds stated for a rehearing in said cause.

Dated this — day of November, 1910.

Properly certified, signed and sworn to.

Nov. 29, 1910.

Per Curiam:

On consideration thereof, the within petition is dismissed.

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*Authentication of Record.***SUPREME COURT,***State of South Carolina, ss:*

I, U. R. Brooks, clerk of said court, do hereby certify that the foregoing pages, numbered from 1 to 129, inclusive, are a true, full and complete transcript of the record and proceedings, in the case of Carolina Glass Company, Plaintiff, versus W. J. Murray, et al. Defendants, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Columbia, S. C., this fourth day of December, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

131 **THE STATE OF SOUTH CAROLINA:**

In the Supreme Court, in the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY Patton, and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Roundtree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Roundtree and Wilson, Defendants.

Assignment of Errors.

Now comes the Carolina Glass Company and files herewith its petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled case, and for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignments:

First. That the Supreme Court of South Carolina erred in holding and deciding that the State Dispensary Commission acted within the limits of the authority and discretion conferred upon it by the Legislature, in ordering the funds in the hands of the County Dispensaries due to plaintiff turned over to itself, and that the said action of the said Commission did not impair the obligation of plain-

132 tiff's contract with the State and deprive plaintiff of its property without due process of law and deny plaintiff the equal protection of the laws, in violation of Section ten of Article I and Section one of the fourteenth Amendment of the Constitution of the United States.

Second. That the Supreme Court of South Carolina erred in holding and deciding that it was unnecessary to inquire whether there was any agreement between the attorneys for plaintiff and the attorneys for the State of South Carolina as to the collection of the amounts due plaintiff from the county dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it had been violated and that the Dispensary Commission was the sole arbiter of plaintiff's rights, if it had any, with regard to the matter, when plaintiff asserted and claimed protection from such contract rights under Section ten of Article I of the Constitution of the United States.

Third. That the Supreme Court of South —— erred in holding and deciding that there was not a legally and morally binding contract between plaintiff and the State of South Carolina, and the defendants as agents and representatives of said State, concerning the shipments and deliveries to be made and actually made by plaintiff to the county dispensaries, in which plaintiff was protected by Section ten of Article I of the Constitution of the United States.

Fourth. Because the Supreme Court of South Carolina should have held and decided that the action of the defendants taken pursuant to the Act of February 23rd, 1910, entitled—"An Act to Further Provide for Winding up the Affairs of the State Dispensary,"—

133 in ordering and requiring the county dispensaries to pay over to defendants the funds due plaintiff and the title to which was at least in equity and good conscience in plaintiff, was unconstitutional, null and void, because in violation of Section ten of Article I and Section one of the Fourteenth Amendment of the Constitution of the United States.

Fifth. Because the Supreme Court of South Carolina should have held and decided that the Act approved February 23rd, 1910, entitled—"An Act to Further Provide for winding up the Affairs of the State Dispensary,"—was unconstitutional, null and void, in so far as it authorized, required or permitted defendants to receive, take or confiscate the funds in the hands of the county dispensaries due and owing to plaintiff, and at least in equity and good conscience the property of plaintiff, because the same impaired the obligation of plaintiff's contract with the State, deprived plaintiff of its property without due process of law and denied to plaintiff the equal protection of the laws, in violation of the Constitution of the United States.

For which errors the plaintiff, Carolina Glass Company, prays that the judgment of the Supreme Court of South Carolina herein, dated November 29th, 1910, be reversed in so far as the same refused to perpetually enjoin and restrain the defendants, and each and every of them, from in any manner demanding or receiving the said sums, or any of them, alleged to be due by the several

county dispensaries named in the complaint to this plaintiff, or from in any manner interfering with the payment of any such sum or sums by the said county dispensaries to this plaintiff, and that said judgment be reversed in so far as the same refused plaintiff's 134 prayer for such other and further relief as was just and proper, and that judgment be rendered in favor of plaintiff enjoining the defendants, and each and every of them as prayed from said Supreme Court of South Carolina, and for such other and further relief as may be just and equitable, and for costs.

JOHN T. SEIBELS,
D. W. ROBINSON,
LYLES & LYLES,

Attorneys for Plaintiff.

Columbia, S. C., November 6th, 1912.

134½ [Endorsed:] The State of South Carolina. In the Supreme Court, in the Original Jurisdiction. Carolina Glass Company, Plaintiff, vs. W. J. Murray et al., Defendants. Assignment of Errors. Lyles & Lyles, Attorneys for Plaintiff. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

135 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, in the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Roundtree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Roundtree & Wilson, Defendants.

Petition for Writ of Error.

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the plaintiff hereby prays a writ of error, from the said decision and judgment, to the Supreme Court of the United States, and an order fixing the amount of a costs bond.

Assignment of errors herewith.

JOHN T. SEIBELS,
D. W. ROBINSON,
LYLES & LYLES,

Attorneys for Plaintiff.

STATE OF SOUTH CAROLINA,
Supreme Court, ss:

136 Let the writ of error issue upon the execution of a bond by the Carolina Glass Company to the defendants above named, in the sum of two hundred and fifty dollars.

EUGENE B. GARY,

Chief Justice Supreme Court of South Carolina.

November 8, 1912.

136½ [Endorsed:] The State of South Carolina. In the Supreme Court, in the Original Jurisdiction. Carolina Glass Company, Plaintiff, vs. W. J. Murray et al., Defendant. Petition for writ of error. Lyles & Lyles, Attorneys for Plaintiff. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

137 CAROLINA GLASS COMPANY, Plaintiff in Error,
 vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Constituting the State Dispensary Commission; J. FRASER LYON, Attorney-General of the State of South Carolina; W. F. STEVENSON, B. L. ABNEY, and CLIFFORD L. ANDERSON, JAMES L. ANDERSON, THOS. B. FELDER, JR., DANIEL W. ROUNTREE, and CHAS. G. WILSON, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants in Error.

Bond.

Know All Men by these Presents, That we, Carolina Glass Company, as principal, and John J. Seibels and B. F. Taylor, as sureties, are held and firmly bound unto W. J. Murray, Chairman, John McSween, A. N. Wood, Avery Patton and J. S. Brice, constituting the State Dispensary Commission, J. Fraser Lyon, Attorney-General of the State of South Carolina, W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Rountree and Chas. G. Wilson, constituting the firm of Anderson, Felder, Rountree & Wilson, in the sum of Two Hundred and Fifty Dollars, to be paid to said parties, to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this sixth day of November, 1912.

Whereas, the above-named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of South Carolina.

Now, Therefore, The condition of this obligation is such, that if the above-named plaintiff in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then

this obligation to be void, otherwise to remain in full force and effect.

CAROLINA GLASS COMPANY,
By JOHN J. SEIBELS, *Its President.*
JOHN J. SEIBELS.
B. F. TAYLOR.

STATE OF SOUTH CAROLINA,
Richland County, ss:

John J. Seibels and B. F. Taylor, being each duly sworn, on oath depose and say: We are each of lawful age and are citizens of the State of South Carolina, and know the contents of the foregoing instrument to which we have attached our names. We each for himself say we are worth the sum of Two Hundred and Fifty Dollars over and above all debts, liabilities and exemptions.

JOHN J. SEIBELS.
B. F. TAYLOR.

Subscribed to and sworn to before me this November 6th, 1912.
EDWARD L. CRAIG, [SEAL.]
Notary Public for South Carolina.

Bond approved this 8th day of November, 1912.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

138½ [Endorsed:] Carolina Glass Company, as Principal,
John J. Seibels and B. F. Taylor, as Sureties, to W. J. Murray et als. Surety bond. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal United States District Court, Eastern Dist. S. C.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between the Carolina Glass Company, and William J. Murray, Chairman; John McSween, Adolphus N. Wood, Avery Patton, James S. Brice, constituting the State Dispensary Commission; James Fraser Lyon, Attorney-General of the State of South Carolina; William F. Stevenson, Benjamin L. Abney, and Clifford L. Anderson, James L. Anderson, Thomas B. Felder, Jr., Daniel W. Rountree and Charles

G. Wilson, constituting the firm of Anderson, Felder, Rountree & Wilson, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Carolina Glass Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the Sixth day of November, in the year of our Lord one thousand nine hundred and twelve.

[Seal United States District Court, Eastern Dist. S. C.]

RICHARD W. WILSON,
*Clerk District Court United States,
 District of South Carolina.*

Allowed November 8, 1912.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

140½ [Endorsed:] Supreme Court of the United States. In the Matter of the Claim of Carolina Glass Company, Plaintiff in Error, against W. J. Murray, et al., Defendants in Error. Writ of error. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

SUPREME COURT,
State of South Carolina, ss:

I, U. R. Brooks, clerk of the said Court, do hereby certify that there was lodged with me as such clerk on November 14, 1912, in the matter of Carolina Glass Company, versus W. J. Murray, et al.:

1. The original bond of which a copy is herein set forth.
2. Fourteen copies of the writ of error as herein set forth, one for each defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at my office in Columbia, S. C., this fourth day of December, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

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Citation.

THE UNITED STATES OF AMERICA, ~~ss~~:

The President of the United States to William J. Murray, Chairman; John McSween, Adolphus N. Wood, Avery Patton, and James S. Brice, constituting the State Dispensary Commission; James Fraser Lyon, Attorney-General of the State of South Carolina; William F. Stevenson, Benjamin L. Abney, and Clifford L. Anderson, James L. Anderson, Thomas B. Felder, Jr., Daniel W. Rountree, and Charles G. Wilson, constituting the firm of Anderson, Felder, Rountree & Wilson, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of South Carolina, wherein the Carolina Glass Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of South Carolina, this 8th day of November, 1912.

[Seal Supreme Court of South Carolina.]

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

Attest:

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Service acknowledged this 15th day of November, 1912.

J. FRASER LYON,
Attorney General,
Attorney of Record for Defendants in Error.

142½ [Endorsed:] Supreme Court of the United States. In the Matter of the Claim of Carolina Glass Company, Plaintiff in Error, against W. J. Murray et al. Defendants in Error. Citation. Lyles & Lyles, Attorneys for Carolina Glass Company. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

UNITED STATES OF AMERICA,
Supreme Court of South Carolina, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of South Carolina, in the City of Columbia, this fourth day of December, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Costs of Suit.

Plaintiff's costs \$35.00, paid by Carolina Glass Company.

Defendants' costs —.
Costs of Transcript, \$15.00, paid by Carolina Glass Company.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

Endorsed on cover: File No. 23,448. South Carolina Supreme Court. Term No. 391. Carolina Glass Company, plaintiff in error, vs. William J. Murray, chairman; John McSween et al., constituting the State Dispensary Commission, et al. Filed December 7th, 1912. File No. 23,448.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915

No. [REDACTED] 512

THE CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
SOUTH CAROLINA.

FILED DECEMBER 30, 1915.

(23,476)



(23,476)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 408.

THE CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
SOUTH CAROLINA.

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1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910.

Before the State Dispensary Commission.

In the Matter of the Claim of

CAROLINA GLASS COMPANY
against
STATE OF SOUTH CAROLINA.

Case for Appeal.

John T. Siebels, Esq., D. W. Robinson, Esq., Messrs. Lyles & Lyles, Attorneys for Carolina Glass Co.

Hon. J. Fraser Lyon, Attorney-General.

Messrs. Anderson, Felder, Rountree & Wilson, Attorneys for State of South Carolina.

The above entitled claim came before the State Dispensary Commission upon a claim filed by the Carolina Glass Company in 1907, in the sum of \$23,013.75, the balance due to said company by the State of South Carolina on account of glass bottles, demijohns, etc., sold and delivered to the Board of Directors of the State Dispensary under awards made by the said Board of Directors in April, 1906, subsequently.

The matter came up for consideration before the Commission and evidence was submitted from time to time. To wit: on the 14th day of February, 1908, and on the 17th and 18th day of June, 1909, when the following proceedings were had.

FEBRUARY 14TH, 1908.

In re THE CAROLINA GLASS COMPANY.

This case was called for hearing before the Commission, Mr. John J. Siebels, Mr. Thomas Taylor, Mr. C. A. Norton and Mr. B. F. Taylor, representing the Carolina Glass Company appeared before the Commission.

C. A. NORTON, being duly sworn, testified:

Examined by Mr. FELDER:

Q. How long have you been in the business of manufacturing glass?

A. Ten years last August.

Q. You commenced where?

A. Tallapoosa, Ga.

Mr. Felder here introduces the testimony of C. A. Norton and Geo. K. Packham, taken before the committee appointed to investigate the Dispensary in Columbia from Feb. 7th to 15th, inclusive, 1906, from pages 155 to 305, inclusive, as published in pamphlet form:

The Commission reassembled Thursday, June 17, at 3.30. The first case called:

The Carolina Glass Company.

General ANDERSON: This case heretofore, in the examination of witnesses, has been conducted by my partner, Colonel Felder, but as he has been working very hard he has asked me to take this claim this afternoon. I see from the evidence taken, that there is little, if any more, to be produced, but in order that there may be no misunderstanding as to the evidence before taken, and before you now, I wish to call your attention to the fact that when some certain witnesses were examined in this case, relative to the investigations made by the Commission, the testimony which was taken before the Legislative Investigating Committee — 1906 was introduced as evidence, and I understand it to be evidence introduced at this time.

Mr. Lyles was present and there was no objection on his part.

Mr. W. H. Lyles, representing the claimant.

Mr. LYLES: We did not represent the Carolina Glass Company at the time of the last investigation, but did represent them at the time of the investigation by the Legislative Committee.

General ANDERSON: I observe from the report of the evidence taken before this Commission that Mr. Felder offered in evidence the testimony taken before the Legislative Committee, which was admitted at the time.

Mr. LYLES: We have no objection to its introduction. I simply said I was not present and did not represent them before this Commission.

General ANDERSON: I introduce in evidence the report of the American Audit Company, which is in pamphlet form and doubtless has been examined by Mr. Lyles, because it applies to the Carolina Glass Company. I wish it understood that the Commission has before it all the records and papers belonging to the late Dispensary, in their possession, for their consideration. I also offer as evidence to be considered in this matter, the report of Charles Hyley & Company, public accountants and auditors—April 4, 1908. Have you seen it Mr. Lyles?

Mr. LYLES: Dr. Murray was kind enough to furnish us with a copy of some of those reports, and we have no objection to any of them going in. We want of course to understand if you refer to anything especially, to know the reference.

General ANDERSON: This report which I offer in evidence relates exclusively to the Carolina Glass Company.

Mr. LYLES: I mean in the general reference you made a few moments ago to the books and documents of the old Dispensary, I

think in fairness to us that we should be informed as to anything special. We are ready and willing — anything brought against us, but want to know it specifically. We are satisfied that nothing can be brought against us we cannot answer. We think the report of the accountant offered is satisfactory.

4 General ANDERSON: I call attention to the account of the Carolina Glass Company as it appears in page 474 of Ledger "E" of the S. C. Dispensary, showing the opening of the account on September 30th, 1902, between the Dispensary and the Carolina Glass Company. I call attention to that in order that Mr. Lyles may know the reason for offering this; on account of the fact it appears from this page of the ledger of the dispensary advanced to the Carolina Glass Company the sum of \$8,140.19 before receiving any shipment of goods from that company at all.

Mr. LYLES: We can show that is a mistake, show that the shipments had all been made.

Mr. BRICE: You will be given that opportunity.

It was subsequently discovered that the items referred to as debits against the Carolina Glass Company were really credits, and that there was nothing in the entries showing payments by the State of South Carolina to the Glass Company before the delivery of Glass.

General ANDERSON: Ledger "F," page 310, from which appears—upon which appears the account of the Carolina Glass Company, and upon that Ledger, which is the Ledger following—the one introduced—appears the shipments that were made, and the two Ledgers disclose that the first shipment was entered as having been received Dec. 1st, 1902, commencing on Sept. 30 to Nov. 22. In compliance with the suggestion made by Mr. Lyles that we should designate what books and papers we shall have reference to as being in the possession of the Commission, coming from the Dispensary, we will refer to the Minutes covering the period of time during which the transactions with the Carolina Glass Company took place, the books and invoices during the period of time they were shipping goods and

5 bidding to the Dispensary I have all the ledgers here which contain the account of the Carolina Glass Company. It is

proper to offer the books as a whole, but usual to call attention to any particular matter. In the progress of any argument, I will especially refer to any matter in the books that may be material to the issue. It would be difficult for me to do so without making a detailed statement. You have an opportunity to reply to some of the arguments I will make in the case.

Mr. LYLES: The usual way to introduce these things, is to introduce your evidence.

Mr. BRICE: You introduce the books and bids to show what General Anderson?

General ANDERSON: The date when the first bid was made, the date when the first bid was awarded, the date of the several bids and awards which followed in each of the successive years after 1902 and until they ceased to do business with the State. The invoices showing the shipments made from time to time in compliance with the several bids made and accepted, and several communications which

appear in the Minutes relating to the Carolina Glass Company matter, one of them being a letter addressed to the Attorney-General of the State asking an opinion—addressed to him by the State Board of Directors—

Mr. LYLES: When was that?

General ANDERSON: I think it was in 1905, as I recall it. I notice in the Minutes a communication from the Commissioner to the Board relative to the amount of cases that should be contained in a car, and a subsequent communication of the Board to the Commissioner limiting the number of cases to be included in each car. That is all I recall.

Mr. LYLES: If that is all, we think those matters pertinent and probably we are acquainted with all those matters. It is certainly proper for the Commission to have all the light thrown upon 6 this matter possible by reference to any of the books of the Dispensary or our books. We have taken the position from the first—

General ANDERSON: Those bids, books and Minutes will also disclose that at the same time bids were made by the Carolina Glass Company, other bids were made by the other glass people, and we will put them in evidence for the purpose of comparing them.

Mr. LYLES: I was going to say, we have taken the position from the inception of this matter, before the Joint Committee appointed in 1906, that we have at stake not only the amount of money but the business integrity of this corporation, and the social and moral integrity of gentlemen who stand in the city of Columbia among the highest, and we can not afford, if we had wished to do so, to object to anything that will throw light. So it is not a question of the technical admissibility of any matters of evidence. All we want it when anything is brought out, if necessary, we be given an opportunity to show it, only want to make a complete showing to this Commission, as we have always made, that these transactions between this company and the Board of Directors have been entirely free from anything reprehensible.

Mr. BRICE: In the same connection, I would like to have this offered in evidence. The Legislature at its session, 1906, passed a resolution canceling all contracts the State made with the Carolina Glass Company.

General ANDERSON: That is matter of law, not required to be in evidence. That will conclude the evidence introduced for the State.

Mr. BRICE: Have you any witnesses?

General ANDERSON: The evidence of Mr. Brevard Miller and Mr. Packham is offered in evidence.

Mr. LYLES: We would like an opportunity to see these references.

7 General ANDERSON: In order that the record may be complete, I will state that we made every possible effort to get those two witnesses—Mr. Miller and Mr. Packham—they were without the borders of the State and unwilling to appear here at this time.

Mr. BRICE: Mr. Lyles, from my recollection and knowledge of

the testimony, there is certainly a doubt in my mind whether the State of South Carolina owes the Carolina Glass Company a cent. I am under the impression, from the testimony, that it will show that the Carolina Glass Company really owes the State a large sum of money. I want to hear you on that point; in other words, that from the fall of 1902, when they commenced doing business down here, their overcharges down here, compared with what the State if doing an honest business, buying glass from other people, would amount to several hundred thousand, and instead of the State owing them some \$18,000.00, they owe the State \$100,000. In developing your case, develop that point—it was published in Collier's Weekly. I got the testimony and read it up on that point, and it is based on the testimony of competent witnesses from other houses. I read your cross-examination and could not see where you shook the testimony of the fellow who said his house would have furnished \$240,000 cheaper.

Mr. LYLES: You refer to the testimony of Mr. Packham?

Mr. BRICE: Yes; I do not mean to stop you, but desire to call your attention to what is in my mind.

Mr. LYLES: I want to state this at the beginning, that it is not strictly speaking in the nature of an argument. As to the merits of the case, in the first place we always contended and we took the trouble to send to Baltimore witnesses who hunted up Mr. Packham's record, and it will bear proof, that he was a man utterly unworthy of belief, a man whose testimony would not be taken as worth anything by those who know his record.

8 Mr. BRICE: Will you prove that?

Mr. LYLES: If you gentlemen please, this Commission is not exactly a Court of Record. You proceed I have no doubt as far as possible in accordance with the lines of procedure which have been considered the best to arrive at matters of truth in a Court of Record. Before the Investigating Committee we had a feeling that we were not treated fairly—I have no reference to Messrs. Lyon and Christensen, who were the principal leaders of that committee, except that they viewed it from a different standpoint, a standpoint that the committee was more in the nature of a grand jury, simply to look upon one side of a case, and whether or not there was any evidence which would tend to prove the charges made against us, and were prepared to show the truth of the charges with specific evidence, we were met with the statement the committee was in such a hurry the matter could not be considered. It was about the close of the session and we were put off in producing the testimony we were preparing to produce. Here is the finding of that grand jury (reads). This was the finding of the committee who had the testimony before them. There is expressed, indicated in that finding, nothing to indicate that the Committee ever were of the opinion there was any reasonable ground to charge this company with such a condition of things as the impression produced on your mind by this testimony.

Mr. BRICE: It is shown that you sold glass in small quantities cheaper.

Mr. LYLES: Any merchant who runs a department store does that

there in Columbia—Mr. J. L. Mimnaugh, who has a large store, sells remnants cheaper, it is customary. We have a statement showing the total amount of glass sold, at a lower figure than the Dispensary bought elsewhere.

Mr. BRICE: I only desired to tell you personally how I felt in the matter, that, instead of the State owing them they owe the State.

9 ATTORNEY-GENERAL: You referred, Mr. Lyles, to Mr. Packham, who did some valuable work, and whose truth and veracity impressed me as favorably as that of the witnesses of the Glass Company. I would like for you to give me some information as to such statement Mr. Packham made, made upon his own knowledge and information and corroborated by the evidence, as was false; you mentioned you could prove that they were false.

Mr. LYLES: I cannot remember now:

ATTORNEY-GENERAL: I want to challenge him at this point to show one single false statement Packham made.

Mr. LYLES: We admitted in the beginning there were some instances in which remnants of glass had been sold at lower rates than sold to the Dispensary. You must understand the glass business is somewhat peculiar in its character, when they start up in the fall—they ordinarily do not operate in the summer, it is so heating impossible to operate in the summer—when they start up in the fall they have to have the tank filled with molten glass, mixed in a certain way, and they have to work during the whole season, because if chilled, it is ruined, and they have to start all over again. As the heat of the summer approaches, it comes to a period when they have to keep enough of that molten glass on hand to fill all orders they have, and it is utterly impossible for them to tell exactly how much will be required. Sometimes the orders do not materialize, sometimes are canceled, and it always happens at the end of the season a remnant so to speak, of this molten glass is in the tank; either that has to be thrown away, or it is blown into something that might amount to something, and which they can dispose of as a remnant, just as any other manufacturer would do as to remnants. It is impossible for a merchant to calculate so he will not have something left over. It is true business policy, and not fair to judge of the trade as the wholesale merchant and say he has charged to one particular valuable customer too much, simply because at the end of the season he sells remnants cheaper to anybody else. This was legitimate and proper to be done, and that was done in this instance.

10 Mr. PATTON: What time of the year?

Mr. LYLES: Any time of the year, for the reason when we cool down in June—of this year—if in operation it is about the season when we have been cooling down, they would manufacture into something for which they have no special order—it might lie there one or two years and sold for what it is worth.

(Hands copy of letter previously addressed to Dr. Murray—sort of a history of this matter.)

General ANDERSON: I think this matter will proceed more rapidly

and satisfactorily if Mr. Lyles will introduce his evidence and argue his case afterwards. I have no desire to criticize, but in making statement to the Commission, as to what may be, or not, supported by the evidence, he is not proceeding properly.

Mr. BRICE: Only such evidence as is offered now will be considered, as we have reopened the case.

General ANDERSON: I object to the letter of the Carolina Glass Company to the chairman of this Commission being introduced, that it be used as evidence.

ATTORNEY-GENERAL: I would also ask leave to object to this. We have had a great deal of "hot air" from this company about this matter, and this case is now open to testimony. If there are facts in that letter, that Mr. Seibels or anybody else knows, let them get up and swear to it. I think General Anderson and Mr. Lyles are amply able to explain to the Commission without reading the correspondence—there were letters published in the journal of the House and Senate from Lanahan and others—hereafter let them stand up and swear to what they know.

11 (Letter offered as evidence.)

Mr. LYLES: This matter has been subjected to the strictest investigation—submitted to the strictest examination by this Commission, it is true, not composed entirely of its present membership, but you are the same Commission in contemplation of law, as the Commission of which Dr. Murray has been Chairman now for some time. It was said that we may offer what evidence we have to offer about this matter. I want to know if it is the purpose of the Commission to disregard anything that has been done by this Commission heretofore?

Mr. BRICE: Just as if it had never completed the matter.

Mr. LYLES: I think that of course the audits which have been made of this matter by the Auditors appointed by the Commission are certainly admissible in evidence. Some of them originally introduced—American Audit Company and Hyley & Company, introduced by the State, therefore they are before the Commission for consideration.

Mr. BRICE: They are evidence.

Mr. LYLES: We find that by those audits the accounts of The Carolina Glass Company—the audits made by the American Audit Co.—that it has been found to be the correct amount—a variation of \$303.00 perhaps which was possibly caused by the books being submitted, the accounts, to the Dispensary Bookkeeper,—the old Dispensary Board itself, making a mistake in crediting one item which should have been a debit—putting it on the wrong side of the account—the American Audit Co., in auditing the account found that error, and by making that correction it made a difference of \$303.00, and when Hyley made the audit it started out with that correction. We stand by the account and are perfectly willing to accept the accounting. The accounting has been most rigid. Referring to this item here, the impression made upon that Investigating Committee was that

glass had been sold to the Dispensary without written contract.

12 You will observe each of these shipments is checked by the (auditor). I will ask you to look at it.

Mr. BRICE: In evidence already.

General ANDERSON: The paper I have is supplemental to that. Mr. Hyley—of Mr. Hyley, I offer both in evidence.

Mr. LYLES: We have both the original and supplement. We understand and agree to it. What we do not understand, however, is the wish of the Commission for us to go through our books and prove item by item something proved and set down by the Auditor.

General ANDERSON: We conceded the audit is correct so far as the books disclose.

Mr. LYLES: That then facilitates matters.

I hardly know how to proceed in the matter. The original and supplemental report of Mr. Hyley are in evidence. The State admits the correctness of the audit according to the books. This audit also shows as you will see that the prices charged conform to the prices of the written contract—here for instance, is the first item of Exhibit "A" (Reads) Nov. 29, 1903, charged in the invoice of that date, \$96.33. According to the contract the award there should have been \$96.69, a difference of 30 cts. That audit has proceeded on that basis throughout, so if this evidence is admitted to be correct according to the books, then by this audit we prove every item of our account to be correctly made, with the exception of the various checks which are put down here by the auditor because this purports to be, and is, a checking of the invoices by the awards July, 1903, amounts, prices and shipments, commencing October 27th, under that award. It seems to me, starting out with the assumption that this is correct, then there is nothing for us to show, nothing further we could show, or anybody require further, as to the correctness of our invoices or our charges, as tallying with the awards which have been made to the

Company for bottles.

13 General ANDERSON: We concede that those awards prove the accounting so far as the books show and a compliance with the contract show, and we have assumed the burden to show that the State had certain offsets or counterclaims which will reduce it.

Mr. LYLES: I think it fair and proper, that you tell us what those offsets are.

General ANDERSON: We will put in the testimony to show that in our opening, ready to argue now, if you say so.

Mr. LYLES: We want it put in, we do not want to fight on any technicalities, but we want you to meet us in the spirit in which we have come here. We do not want any snap judgment on us, and we think bringing it down to a fair issue as possible, it is for him to tell us what he thinks he has as an offset, because his admission establishes the validity of our account, unless he has something to offset it.

Mr. BRICE: I presume he has reference, specially, to Packham's testimony.

General ANDERSON: Norton's, Seibel's, Packham's, Brevard Miller's and all the other testimony—and I will call attention to the fact that Mr. Lyles was present and cross-examined those witnesses, and he should be familiar with the testimony. I was not

present and all the knowledge I had was by a careful reading of the testimony taken in his presence. He has had it in his possession for some years, and if not prepared to answer the testimony taken at that time, I will ask the Commission to hear me argue the case.

Mr. BRICE: As a member of this Court, I want information. Packham and Norton both stated their houses offered to sell the State Dispensary glass at a certain price.

Mr. LYLES: You are mistaken as to Norton, he was manager of the Carolina Glass Company.

Mr. BRICE: Packham then, and he mentioned another house that made bids. That this Board of Control instead of awarding 14 bids to that house, which was a responsible house, awarded them to the Carolina Glass Company, thereby loosing in one instance \$240,000 and in another \$50,000. I can not believe the State owes them; in other words, the relations which existed between the Company and the Board of Directors were very close. I do not want to be prejudiced against them. I only think it right to tell you what I believe is the testimony on that point.

Mr. LYLES: I do not believe that you as a Commissioner, would be prejudiced against them. I can see how you feel as to wanting testimony on that point. We are not prepared to offer it, however, on that point this afternoon, as to whether Packham ever could have made any bid. We certainly do know that the Carolina Glass Company has never been conscious of getting any contracts that they are not entitled to and they paid strict attention to the law, and had the strictest idea of justice and fairness in dealing with the State. In every instance they put their bids in in accordance with law, and when awarded a contract they have fulfilled it to the letter of the law; that is shown by the audit, very slight if any variation, which would occur in any large dealings, but they have never been conscious, and I do not know at this moment how it would be possible for us to meet the idea which seems to have existence in your mind. We submit with great deference, respect and honor for every gentleman who constitutes this Commission, that to meet the idea or impression which may have been lodged in your minds, as your chairman says, by reading of Collier's Magazine.

Mr. BRICE: It was the testimony I referred to. I read the testimony to see if it sustained what appeared in that paper and it did.

Mr. LYLES: We submit that these matters are to be considered by the testimony of this case, and we submit, that the matters we shod and that you show, will be passed upon when you pass upon this matter.

15 Mr. BRICE: Do you wish to offer testimony to rebut the testimony heretofore taken in this cause, to show these people did not overcharge the State.

Mr. LYLES: We are not prepared to do it this afternoon.

Mr. BRICE: You stated you had no oppo-tunity to show Packham's testimony was false; do you wish that oppo-tunity?

Mr. LYLES: We have one witness here. This matter has surprised us. We had no idea that after the matter had been settled

by the Commission, and the Senate's investigation, we are surprised it is again brought into question.

Mr. J. C. NORTON, duly sworn:

Examined by Mr. LYLES:

Q. What is your position?

A. Cashier and salesman of the Carolina Glass Company.

Q. What is your age?

A. 31.

16 General ANDERSON: The State has no further testimony.

Mr. BRICE: It is proposed that you go into argument now. I wish, however, to state to you gentlemen that while you may do so, if there is any additional testimony it all will be offered, as Mr. Patton is examining the books of this company and there are certain references which he may wish to offer when his examination is completed.

Mr. PATTON: Are the books of this Company all turned over to the Commission?

Mr. LYLES: Upon the call of the Commission we turned over to it all the books of the Company and they in turn were given to the American Audit Company by the Commission, and after that Hyley & Company, and after the books had been out of our possession—we think in the possession of the Attorney-General—(Attorney-General: I will state they were never in my possession) they were then sent back to us by Dr. Murray, chairman of the Commission. (Dr. Murray: You are mistaken Mr. Lyles as to that.)

Mr. PATTON: The Commission has never made an examination of the books.

ATTORNEY-GENERAL: My recollection is the books were at the disposal of the Commission, how long I can not say.

Mr. LYLES: We state they were at your disposal—at the disposal of the Commission—in the hands of some one representing the Commission, after that audit had been made, and it was announced the Commission was through with the books and they were taken charge of by Mr. Seibels, and carried to the Glass Works, and the older books were stored in a building used in connection with the demijohn business, and the books were stored there. Before the opening, the question arose as to the reopening of this claim. A passing engine on the A. C. L. R. R. set fire to the building occupied by the Read Company and burned up those old books, with the exception of the books we have here to-day, and they are all the books

the company now owns. The Company was in no wise responsible for the burning, and very sorry it happened.

17 However we can produce proof as to the price of every sale, as the card system was in use then and the prices are all there and we will be glad to furnish any information asked for.

General ANDERSON: I am willing to go into the argument of the case, with the reservation if any further testimony is offered in the future, that both sides may offer it if they desire.

Mr. LYLES: That is satisfactory, provided that if it is reopened we have notice of it. However before we go into argument would like to ask Mr. Brewer a few questions.

The following evidence was taken by the Legislative Investigating Committee in 1906 was offered in evidence, and was admitted and considered by the Commission:

The attorney General stated to Mr. Lyles that there was no testimony of any kind before the Commission tending to discredit the testimony of G. K. Packham, and if he desired to impeach the witness he would have the privilege of offering any evidence in that respect. That this *event* evidence would also be offered on the part of the State for the purpose of discrediting the testimony of one of claimant's witness.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, Clerk.

18-19

EXHIBIT F.

Judgment.

The said State Dispensary Commission thereafter filed the following judgment:

STATE OF SOUTH CAROLINA,
County of Richland:

In the Matter of the Claim of the CAROLINA GLASS COMPANY
Against the State Dispensary of South Carolina.

The foregoing matter having come on for a hearing before this Commission, and evidence having been taken for and against the claim made by said Carolina Glass Company against the State Dispensary, and after hearing the argument of the counsel representing said claimant and counsel representing the interests of the State:

This Commission, exercising its powers under and by virtue of an Act of the General Assembly of the State of South Carolina approved February, 1907, and Acts amendatory thereto, find as follows:

First. That the Carolina Glass Company was organized during the summer of 1902 in pursuance of an agreement which had been made between its promoters and certain members of the Board of Directors of the South Carolina State Dispensary whereby it was

intended that the said Carolina Glass Company should manufacture such glass as the Board of Directors of the State Dispensary might agree to purchase, and that awards for the purchase of glass to be used by said State Dispensary should be made exclusively to the Carolina Glass Company; and that said officers and promoters of the said Carolina Glass Company and said Board of Directors or some of them entered into a conspiracy to defraud the

State of South Carolina by preventing and defeating all competition in the sale of glassware needed, used or purchased by the State Dispensary, and did in fact destroy all such competition.

Second. That in pursuance of this understanding and agreement the said Carolina Glass Company bid (in September, 1902) to furnish fifty cars of glass bottles at prices ranging about ten per cent in excess of the prices that were then being paid by said State Dispensary to Flaccus & Company, with whom the State Dispensary then had a contract, a large part of which was still unfilled; and notwithstanding this fact and the further fact that at the same time other bids were filed from other reputable houses at lower prices, said Board of Directors awarded the contract to said Carolina Glass Company at those prices; that on or about December 3, 1902, the said Carolina Glass Company entered into an agreement with said Flaccus & Company under and by virtue of which the Carolina Glass Company purchased the contract of said Flaccus & Company and agreed to assume its full and complete performance, and also by the terms of said contract purchased from said Flaccus & Company the special moulds needed to manufacture the special bottles required under the rules of the Board of Directors of the State Dispensary and other material used in connection with their manufacture and packing; that the Board of Directors of the State Dispensary thereupon ratified the transfer of this contract from Flaccus & Company to the Carolina Glass Company and there was at

21 the time the same was purchased twenty-two cars of glass still to be delivered under its terms; that thereafter said Carolina Glass Company did not deliver any glass whatever to the State Dispensary as being manufactured under the terms of the Flaccus contract, nor at the price named in the Flaccus contract, but continued to manufacture glass under the award which has been made to it under its bid filed in September, 1902, until in March, 1903, another award was made by said Board of Directors of the South Carolina Dispensary to said Carolina Glass Company at substantially the same prices, although at that time its own contract made in September, 1902, had not been fully executed and no part of the remaining cars of glass called for under the Flaccus contract had been manufactured or delivered, and notwithstanding the further fact that there were several bids made for the manufacture and delivery of glass under the terms and conditions imposed by the Board of Directors of the State Dispensary for much lower prices and for goods of just as good quality, the said bid of the Carolina Glass Company being then the highest bid made for the furnishing of glass with the exception of a bid by Flaccus & Company, which was a few cents higher than that of the Carolina Glass Company, and which the Commission finds was a dummy bid, not intended to be accepted, but made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass Company that the former would not compete for business with the State Dispensary but would file this bid as a blind; said Flaccus & Company having no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary.

Third. That for several quarterly periods following that of March, 1903, bids were invited for glass to be furnished to the State Dispensary and other bidders filed bids besides the Carolina Glass Company, all of which were lower in price, (though for goods equal in quality) than those proposed at the same time by the Carolina Glass Company, and that some of said bids were suppressed by said Board of Directors, with the consent of the Carolina Glass Company so that no entry or record was made upon the books of said Board of Directors of the State Dispensary in regard thereto; that notwithstanding this, awards in each instance were made to the said Carolina Glass Company and purchases made from it at the higher prices named in their bids.

Fourth. That after December 3, 1902, and until the early part of the year 1906, when pursuant to a concurrent resolution of the Senate and House of Representatives of the State of South Carolina, the existing contract between the State Dispensary and the Carolina Glass Company, as to unfilled portions thereof, were canceled, the said Carolina Glass Company, by and with the aid and assistance of the Board of Directors of said State Dispensary and in furtherance of the conspiracy already formed to destroy and prevent all competition in the sale of glass to said Dispensary, secured and maintained a complete monopoly of all the business in that commodity that was done with said State Dispensary; that after the year 1902, and during the remainder of the period above named said Carolina Glass Company secure in the monopoly then created, raised its prices from time to time and were awarded contracts therefor, by said Board of Directors, said prices being at all times much above the fair market prices for the goods sold. Said Board of Directors continuing at nearly every quarterly meeting to award new contracts to said Glass Company at those exorbitant prices, whether the goods were then needed or not, and notwithstanding that said Glass Company had never filled said Flaccus contract until, at the time of the passage of the concurrent resolution by the two Houses of the General Assembly of South Carolina in 1906 canceling the unfilled portions of existing contracts, there were outstanding contracts at exorbitant prices under which there remained to be filled orders for more than two hundred cars of glass bottles of the approximate value of more than \$200,000; by which action on the part of the General Assembly, according to the testimony of one of the officers of said Glass Company, the State saved more than \$50,000, when comparison is made with the prices paid for goods subsequently purchased.

Fifth. That said Carolina Glass Company sold goods of the same quality and size and general character as that sold to the State Dispensary in other States and in other parts of the State of South Carolina at prices which, making allowances for all credits properly to be given to said Carolina Glass Company for the different conditions under which those sales were made, averaged in prices from twenty to twenty-five per cent below the prices at which the same goods were being sold to the State of South Carolina; the agent of said Carolina Glass Company admitting in his evidence before this Commission that the purchase of the Flaccus contract was made

for the purpose of getting rid of a competitor, and that wherever his company sold goods in competition with others they met that competition by selling the goods at lower prices than the same were sold to the State of South Carolina.

We therefore find that the contracts made between the Carolina Glass Company and the Board of Directors of the State Dispensary were contrary to the laws of the State and against public policy, and for those reasons null and void, and that the said Carolina Glass Company should not, as a matter of strict law, be entitled to recover any sum of money from the State of South Carolina on account of said contracts, even if the State had no offsets against them whatsoever; but the Commission further finds that it should de-

24 determine the matter on equitable principles and fix the matter of liability on a "quantum meruit" basis and that the prices at which the Carolina Glass Company sold to the State Dispensary the glassware manufactured by it ranged throughout the entire period of their transactions with the State Dispensary, except for the years 1906 and 1907 at about ten per cent above the fair and reasonable market price for said goods. The Commission finds that the total amount of sales, after making all proper corrections therein, made by the Carolina Glass Company during the entire period of the transactions with the State Dispensary up to the time it was abolished, was \$613,437. Of this amount the sum of \$99,108 was for goods sold during the year 1906 and the short period during 1907 during which that Dispensary was conducted, so that the total sales made by the Carolina Glass Company during the years preceding the year 1906 aggregated \$514,329.90.

The Commission finds that beginning early in the year 1906, as the result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina and the resolutions adopted by the General Assembly relating especially to the contracts with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did lower its bids to prices which during that year and the short period of 1907 during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906 the overcharges made in excess of the fair and reasonable market price for the goods sold was \$51,432.99, which should be and is hereby offset against the claim in favor of said Carolina Glass Company, to-wit, its claim for \$23,013.75, which, being deducted from the amount of said overcharges, the Commission

25 finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of \$28,419.24.

Whereupon, judgment is rendered in accordance with the foregoing findings.

Signed this, November 17th, 1909.

W. J. MURRAY—No.
JOHN MCSWEEN—No.
A. N. WOOD.
AVERY PATTON.
J. S. BRICE.

Within ten days from the filing of said judgment the claimant duly served and filed, in writing, its notice of appeal to the Supreme Court from said judgment.

Notice.

You will please take notice, that the Carolina Glass Company intends to appeal from the order, or judgment, of the State Dispensary Commission rendered upon its claim, above entitled, and dated the 17th day of November, and served on the said Carolina Glass Company, November 20, 1909, upon exceptions to be hereafter served with the case for appeal.

LYLES & LYLES,

Attorneys for Carolina Glass Company.

Columbia, S. C., November 24, 1909.

To Hon. W. J. Murray, Chairman; Hon. John McSween, Hon. A. N. Wood, Hon. Avery Patton, Hon. J. S. Brice, Constituting the State Dispensary Commission, and Hon. J. Fraser Lyon, Attorney General for the State of South Carolina.

26 Within thirty days from the service of said notice of appeal, the claimant duly served this case for appeal, with exceptions, as follows:

Exceptions.

Before the State Dispensary Commission.

STATE OF SOUTH CAROLINA,
County of Richland:

In the Matter of the Claim of CAROLINA GLASS COMPANY against
STATE DISPENSARY COMMISSION.

You will please take notice, that for the purpose of appeal to the Supreme Court of the State of South Carolina from the judgment of the State Dispensary Commission, the claimant, Carolina Glass Company, excepts to the rulings of said Commission and the judgment on said claim, on the following grounds, to-wit:

1. Because, by section eleven of an Act entitled "An Act to Provide for the Disposition of all Property Connected with the State Dispensary, and to Wind Up Its Affairs," approved the 16th day of February, 1907, as amended by the Act approved the 24th day of February, A. D. 1908, entitled "An Act to Amend an Act Entitled 'An Act to Provide for the Disposition of all Property Connected with the State Dispensary, and to Wind Up its Affairs,' so as to Provide Compensation for Members of the Said Commission for the Year 1908, and to Provide for the Sale of the Real Estate Heretofore Used in Conducting the Dispensary, and to Further Provide for Winding Up the Affairs of the State Dispensary," the State Dispensary Commission are invested with judicial powers "to

pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary," and, in contemplation of law, should have proceeded in a judicial manner to fairly and impartially decide between the State of South Carolina and such persons or corporations as might file claims against the State of South Carolina growing out of dealings with the State Dispensary; and the said claimant submits that the said State Dispensary Commission did not so proceed in considering claimant's claim, for the following reasons:

(a) Because said State Dispensary Commission entered into a contract with Messrs. Anderson, Felder, Rountree & Wilson, whereby said State Dispensary Commission agreed to pay to said attorneys a commission upon all amounts by which the amounts of claims filed before said Commission might be reduced, and also upon all amounts which might be recovered for the State of South Carolina, thereby in effect contracting to cooperate with the said attorneys and to be influenced by them in reducing the claims so filed and in finding judgments against claimants.

(b) Because the said State Dispensary Commission, in their deliberation upon the claim of the above-named claimant, allowed the said attorneys, Messrs. Anderson, Felder, Rountree & Wilson, to be present at their deliberations in executive session when no representative of claimant was present, and to take part in the same, and were thereby unduly and unfairly influenced against the claim of the above-named claimant.

(c) Because one of the said Commissioners, Mr. J. S. Brice, himself a new appointee upon said Commission, and not having heard any of the testimony theretofore adduced, upon the opening of the argument upon the claim, stated as follows, *to-wit*:

28 "Mr. Lyles, from my recollection and knowledge of the testimony, there is certainly a doubt in my mind whether the State of South Carolina owes the Carolina Glass Company a cent. I am under the impression, from the testimony, that it will show that the Glass Company really owes the State a large sum of money. I want to hear you on that point; in other words, that from the fall of 1902, when they commenced doing business down here, their overcharges down here, compared with what the State if doing an honest business, buying glass from other people, would amount to several hundred thousand, and instead of the State owing them some \$18,000, they owe the State \$100,000. In developing your case, develop that point—it was published in Collier's Weekly. I got the testimony and read it up on that point, and it is based on the testimony of competent witnesses from other houses. I read your cross-examination and could not see where you shook the testimony of the fellow who said his house would have furnished \$240,000 cheaper," thereby showing that his own mind had been greatly prejudiced and that he had formed an opinion against the validity of claimant's claim from the reading of Collier's Weekly, a weekly periodical published in the City of New York, of a highly sensational character; the said Commissioner thereafter, notwithstanding such disqualification, participating in the meeting of said Commission and being one of the three Commissioners who united in the judgment of the

Commission sustaining an offset against claimant's claim which more than wiped out the same.

2. Because, upon the investigation in consideration of claimant's said claim, the said Commissioners considered a vast amount of so-called testimony which had been taken by the Investigating Committee of the General Assembly in the years 1905 and 1906, and said testimony was taken by said Committee only as an Investigating Committee and for an ex parte showing, and the above-named claimant had not had an opportunity properly to cross-examine the witnesses so examined or to offer testimony in answer thereto.

29 3. Because, upon said investigation, the said State Dispensary Commission considered the ex parte affidavit of Brevard D. Miller, taken outside of the State of South Carolina, when the said claimant had had no opportunity to cross-examine him or to confront him.

4. Because, in considering the said claim, the said Commissioners considered the testimony of one George K. Packham, the testimony in its nature being such as not to be relevant to the issues in question, and the said claimant not having had an opportunity before said Investigating Committee to establish, by disinterested witnesses, not only the invalidity of the testimony of the said Packham in every particular, but that he himself was a person unworthy of belief.

5. Because said Commissioners considered any testimony to the effect that other glass houses might have sold glass bottles, etc., cheaper to the State Dispensary than did the claimant above named, for, under the law which had been especially enacted for the government of the State Dispensary, it was unlawful for the Commissioners thereof to entertain bids for glass or any other commodity, unless the same were submitted under the rules and regulations prescribed by law for the government of the said Dispensary, and the bids which had been from time to time submitted by the claimant above named were regular in all respects, and full compliance had been made with provisions of law in submitting the same.

6. Because the said Commissioners took into consideration the fact that the above-named claimant in the conduct of its business, selling about 97 per cent of its entire product to the State of 30 South Carolina, did occasionally sell a small part of the remaining 3 per cent of its product to other parties at prices lower than the prices contracted for to the State Dispensary, and it was shown by overwhelming testimony that the part so sold practically consisted of remnants of molten or blown glass which were from time to time disposed of in this manner to avoid a complete loss of the product, as would have otherwise resulted.

7. Because the Commission found as follows, to-wit: "That the Carolina Glass Company was organized during the summer of 1902 in pursuance of an agreement which had been made between its promoters and certain members of the Board of Directors of the South Carolina State Dispensary whereby it was intended that the said Carolina Glass Company should manufacture such glass as the Board of Directors of the State Dispensary might agree to purchase, and that awards for the purchase of glass to be used by said State Dispensary

should be made exclusively to the Carolina Glass Company;" there being no evidence to sustain the same, said Commissioners having considered and such finding being based solely upon the ex parte affidavit of Brevard D. Miller, taken without the borders of the State without notice to the Carolina Glass Company, and in its nature inadmissible, and, moreover, contradicted by the absolute testimony of the witnesses Seibels, Thomas Taylor, Childs, Whaley and Norton, and the affidavits of every other member of the Board of Directors of the Carolina Glass Company, and by the overwhelming showing that no member of the Dispensary Board ever had any interest in the company.

8. Because the Commission found as follows, to-wit: "That said officers and promoters of the said Carolina Glass Company and said Board of Directors or some of them entered into a conspiracy to defraud the State of South Carolina by preventing and defeating 31 all competition in the sale of glassware needed, used or purchased by the State Dispensary, and did in fact destroy all such competition;" the same being without any evidence tending to establish such conspiracy.

9. Because the said Commission found as follows, to-wit: "That in pursuance of this understanding and agreement the said Carolina Glass Company did (in September, 1902) to furnish fifty cars of glass bottles at prices ranging about ten per cent in excess of the prices that were then being paid by said State Dispensary to Flaccus & Company with whom the State Dispensary then had a contract, a large part of which was still unfilled; and notwithstanding this fact and the further fact that at the same time other bids were filed from other reputable houses at lower prices, said Board of Directors awarded the contract to said Carolina Glass Company at those prices;" the same being erroneous—

(a) In that there was no testimony that the bid made by the Carolina Glass Company in September, 1902, was made in pursuance of any understanding and agreement with the Board of Directors of the Dispensary.

(b) In that there was no testimony tending to show the fact that at the same time other bids were filed from other reputable houses at lower prices.

(c) In that it was not true that a large part of the Flaccus bid was still unfilled.

10. Because the said Commission found that "there was at the time the same was purchased twenty-two cars of glass still to be delivered under its terms;" when they should have found, from the records of the Board of Directors of the Dispensary themselves, that the said Flaccus contract had been more than filled as to the amount of glass contracted for, and should have found that the Board of Directors could not have accepted more glass thereunder without violating the law governing their actions.

32 11. Because the said Commission found, that in March, 1903, the bid of the Carolina Glass Company was accepted "notwithstanding the further fact that there were several bids made for the manufacture and delivery of glass under the terms and conditions imposed by the Board of Directors of the State Dispensary

for much lower prices and for goods of just as good quality;" which was error in that there was no evidence that other bids were made at lower prices.

12. Because the said Commission found, with reference to the bid of March, 1903, as follows, to-wit: "The said bid of the Carolina Glass Company being then the highest bid made for the furnishing of glass with the exception of a bid by Flaccus & Company which was a few cents higher than that of the Carolina Glass Company, and which the Commission finds was a dummy bid, not intended to be accepted, but made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass Company that the former would not compete for business with the State Dispensary but would file this bid as a blind; said Flaccus & Company having no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary;" which was error.

(a) In that they found that said bid was the highest bid made for the furnishing of glass, with the exception of a bid by Flaccus & Company.

(b) In that they found that the said bid of Flaccus & Company was a dummy bid not intended to be accepted.

(c) In that they found that said bid of Flaccus & Company was made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass Company that the former would not compete for business with the State Dispensary and filed this bid as a blind.

(d) In that they found that the said Flaccus & Company 33 had no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary; when, as a matter of fact, the said Flaccus & Company had a well-equipped mould shop and had every facility for the making of moulds of any character and at any time, and there was no testimony to the contrary.

There was no testimony of any character offered to sustain said findings and they were merely unwarranted assumptions on the part of the said Commission.

13. Because the said Commission found as follows, to-wit: "That for several quarterly periods following that of March, 1903, bids were invited for glass to be furnished to the State Dispensary and other bidders filed bids besides the Carolina Glass Company, all of which were lower in price (though for goods equal in quality), than those proposed at the same time by the Carolina Glass Company;" which was error in that there was no evidence to show that other bids were filed besides those of the Carolina Glass Company which were lower in price.

14. Because the said Commission found as follows, to-wit: "And that some of said bids were suppressed by said Board of Directors, with the consent of the Carolina Glass Company so that no entry or record was made upon the books of said Board of Directors of the State Dispensary in regard thereto; that notwithstanding this, awards in each instance were made to the said Carolina Glass Company and purchases made from it at the higher prices named in

their bids;" which was error in that there was no testimony that any bids were ever suppressed by said Board of Directors or that the Carolina Glass Company ever consented thereto.

15. Because the said Commission found as follows, to-wit: "That after December 3, 1902, and until the early part of the year 34 1906, when pursuant to a concurrent resolution of the Senate and House of Representatives of the State of South Carolina, the existing contract between the State Dispensary and the Carolina Glass Company, as to unfilled portions thereof, were canceled, the said Carolina Glass Company, by and with the aid and assistance of the Board of Directors of said State Dispensary and in furtherance of the conspiracy already formed to destroy and prevent all competition in the sale of glass to said Dispensary, secured and maintained a complete monopoly of all the business in that commodity that was done with said State Dispensary;" which was error in that there was no testimony that there was any conspiracy on the part of the Carolina Glass Company and the Board of Directors of the State Dispensary, or any collision between them, to destroy and prevent competition in the sale of glass to the Dispensary or to secure and maintain a monopoly of the business in that commodity.

16. Because the said Commission found as follows, to-wit: "That after the year 1902, and during the remainder of the period above named, said Carolina Glass Company, secure in the monopoly then created, raised its prices from time to time and were awarded contracts therefor, by said Board of Directors, said prices being at all times much above the fair market prices for the goods sold;" which was error in finding that any monopoly had been created and that said prices were above the fair market prices for the goods sold, when said Commission should have recognized that glass, like any other commodity, varied in prices and that, as shown by the testimony, the cost of production, on account of the material used, and the constantly increasing prices of labor, steadily increased during the period named.

17. Because the said Commission found as follows, to-wit: "Said Board of Directors continuing at nearly every quarterly meeting to award new contracts to said Glass Company at those exorbitant prices, * * * until * * * in 1906 * * * 35 there were outstanding contracts at exorbitant prices;" which was error in that there was no testimony to show that the prices were exorbitant, and, as a matter of fact, they were not.

18. Because the said Commission found that by the action of the General Assembly in canceling the contract with the Carolina Glass Company, "according to the testimony of one of the officers of said Glass Company, the State saved more than \$50,000, when comparison is made with the prices paid for goods subsequently purchased;" which was error in that it refers to a merely supposititious case, comparing the prices which had been fixed in the said contracts, with the price of the glass in a single transaction subsequently made when the company had the glass on hand and suitable for no other customer, with the name of the State blown in the bottles, which had to be sold at a sacrifice.

19. Because the said Commission found as follows, to wit: "That said Carolina Glass Company sold goods of the same quality and size and general character as that sold to the State Dispensary in other States and in other parts of the State of South Carolina at prices which, making allowances for all credits properly to be given to said Carolina Glass Company for the different conditions under which those sales were made, averaged in prices from twenty to twenty-five per cent below the prices at which the same goods were being sold to the State of South Carolina;" which was error in the conclusion that such fact was true, proper allowances being made for different conditions, etc., and that it showed that an improper price was being charged to the State of South Carolina, because it appeared in evidence that probably not over two per cent of the product of the company was sold to other parties at lower prices than were sold to the State of South Carolina, and then only because of that being the surplus product and in the nature of remnants.

36 20. Because the said Commission found as follows, to-wit:

"The agent of said Carolina Glass Company admitting in his evidence before this Commission that the purchase of the Flaccus contract was made for the purpose of getting rid of a competitor and that wherever his company sold goods in competition with others they met that competition by selling the goods at lower prices than the same were sold to the State of South Carolina." Such findings being based upon a misapprehension of the testimony.

21. Because the said Commission concluded as follows, to-wit: "We therefore find that the contracts made between the Carolina Glass Company and the Board of Directors of the State Dispensary were contrary to the laws of the State and against public policy, and for those reasons null and void, and that the said Carolina Glass Company should not, as a matter of strict law, be entitled to recover any sum of money from the State of South Carolina on account of said contracts, even if the State had no offsets against them whatsoever."

22. Because the Commission found as follows, to-wit: "But the Commission further finds that it should determine the matter on equity principles and fix the matter of liability on a 'quantum meruit' basis and that the prices at which the Carolina Glass Company sold to the State Dispensary the glassware manufactured by it ranged throughout the entire period of their transactions with the State Dispensary, except for the years 1906 and 1907 at about ten per cent above the fair and reasonable market price for said goods;" which finding was erroneous in that it stated that, with the exception therein stated, the price charged the State of South Carolina ranged at about ten per cent above the fair and reasonable market prices for said goods, there being no evidence to support the same.

23. Because the Commission found as follows, to-wit: "But
37 the Commission finds that during the years preceding 1906
the overcharges made in excess of the fair and reasonable market price for the goods sold was \$51,432.99, which should be and is hereby offset against the claim in favor of said Carolina Glass Company, to-wit, its claim for \$23,013.75, which, being deducted from the amount of said overcharges, the Commission finds said

Carolina Glass Company to be indebted to the State of South Carolina in the sum of \$28,419.24;" which was error.

(a) In that the Commission found that any overcharges were made in excess of fair and reasonable market prices for goods sold, or that said overcharges amounted to \$51,432.99, which was without evidence.

(b) In that they concluded that such overcharges should be offset against the claim in favor of the said Carolina Glass Company.

(c) In that no question of the right of the State of South Carolina against said claimant on account of the transaction prior to 1906 by offset,—counterclaim or otherwise,—was before the said Commission by any notice or other pleading of any character.

(d) In that the said Commission, being a court whose jurisdiction was limited to the consideration of and passing upon claims made against the State of South Carolina on account of the State Dispensary, it had no power to consider the supposed claim of the State of South Carolina against the claimant on account of other transactions which had occurred prior to the year 1906.

24. Because the said State Dispensary Commission was a commission of limited jurisdiction having no authority to pass upon claims of the State of South Carolina against other persons, and therefore had no jurisdiction to offset against the just and valid claim of the above-named claimant for the sum of \$23,013.75
38 as found by said Commission, a supposed claim against the said claimant on account of previous and other transactions between the said claimant and the State of South Carolina.

25. Because the above-named claimant, having duly filed its claim against the State of South Carolina for the sum of \$23,013.75 growing out of dealings with the Dispensary, the validity of that claim, and of that claim alone, was before the said State Dispensary Commission for consideration. There was no pleading or notice of any character apprising the said claimant that the State of South Carolina, or the said State Dispensary Commission, would undertake to offset against said valid claim another claim of the State of South Carolina, and this claimant has, by the judgment of said State Dispensary Commission, been deprived of its just rights without due process of law and without due and orderly consideration of the subject matter of said supposed offset.

26. Because the method of procedure of the said State Dispensary Commission in considering claimant's claim and in offsetting the same, when duly allowed and approved of by them, by a supposed claim of the State of South Carolina on account of previous and other transactions between the said claimant and the said State of South Carolina, was not only in violation of section 11 of the Act to Amend an Act entitled "An Act to Provide for the Disposition of all Property Connected with the State Dispensary, and to Wind Up its Affairs," but also was in violation — and in repugnance to Article 1, section 5, of the Constitution of the State of South Carolina, and to the 14th Amendment, section 1, of the Constitution of the United States, for the following reason:

In that, when no provision was made for the consideration of such

claim for the State of South Carolina against said claimant, and without any notice or pleading whatsoever, the said claimant having come into court only to present its claim against the State of South Carolina, the said State Dispensary Commission, without pleading or notice, undertook to adjudge, and did adjudge, that the said claimant was indebted to the State of South Carolina in the sum of \$51,432.99 arbitrarily fixing the same at ten per cent of the amount of sales which had been previously made by claimant to the State of South Carolina, and thus not only wiped out the just and equitable claim, as found by said Commission itself, of \$23,013.75, in favor of this claimant against the State of South Carolina, but rendered a so-called judgment against this claimant in favor of the said State of South Carolina in the sum of \$28,419.24.

JOHN T. SEIBELS,
D. W. ROBINSON,
LYLES & LYLES,

Attorneys for Claimant.

To the State Dispensary Commission and Hon. J. Fraser Lyon, Attorney-General.

40 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910.

CAROLINA GLASS COMPANY, Appellant,
vs.
STATE OF SOUTH CAROLINA, Respondent,

and

CAROLINA GLASS COMPANY, Plaintiff,
vs.
W. J. MURRAY et al., Defendants.

Opinion by D. E. Hydrick, A. J.

The above stated cases were heard and will be considered together, as the second grows in part out of the first. At the session of 1905, a committee of the legislature was appointed, under a concurrent resolution, to investigate the affairs of the State Dispensary, 24 Stat., 1220. The resolution was very broad in its scope, and authorized the committee, among other things, to investigate all transactions connected with the dispensary and its management, present and past, and the connection of any of its officers with any corporation, concern or individual, contracting for the sale of goods to the State for the dispensary, and ascertain the financial standing of the business.

The investigations of the committee resulted in an act, passed in 1907, authorizing the appointment of a commission, to be known as the State Dispensary Commission, whose duty it was to close out the entire business and property of the State Dispensary, collect

all debts due, and pay "all just liabilities" of the State growing out of said business. The Commission was given "full power and authority to investigate the past conduct of the affairs of the dispensary." It was also clothed with all the power and authority conferred upon the Committee, which had been appointed under the resolution above referred to. 25 Stat., 835. The act of 1907

41 was amended in 1908 so as to give the commission "full power to pass upon, fix and determine all claims against the State growing out of dealings with the dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it, and no other." 25 Stat., 1289.

Appellant presented to the commission a claim for \$23,013.75 as the balance due it by the State for bottles and demijohns furnished to the dispensary under contracts made with the board of directors from and including April, 1906, until the business was closed out by the commission. Appellant had also furnished the dispensary practically all the bottles and demijohns used since about December, 1902; but all accounts prior to April, 1906, had been settled.

Upon the filing of this claim, the Commission went into an investigation of all past dealings of appellant with the dispensary; and, after hearing a great deal of testimony and argument thereon, rendered its decision, dated Nov. 17, 1909, which will be set out in the report of the case.

The conclusion and finding of the Commission was that, in pursuance of a conspiracy between some of the directors of the dispensary and some of appellant's officers or agents to defraud the State, whereby legitimate competition was destroyed, appellant had a monopoly of the business of furnishing glass to the dispensary from the date of its beginning business, in 1902, until April, 1906; and that the prices paid it for glass during that period exceeded the fair market value thereof by \$51,432.99. Therefore, allowing appellant's claim of \$23,013.75, the commission found that appellant was indebted to the State in the sum of \$28,419.24, the difference between the amount of its claim and the sum it had fraudulently collected from the State.

From that decision, this appeal was taken, under the provisions of the statute, "giving every claimant the right of appeal to the Supreme Court, as in cases at law." Appellant concedes that the jurisdiction of this court is limited in such cases to a review of alleged errors of law. Many of the exceptions question the findings 42 of fact on the ground that there is no testimony to support them. If that were so, they might be corrected as errors of law. But, after a very careful consideration of the testimony, we have failed to discover that any of the findings of fact are wholly unsupported by testimony. It would unnecessarily prolong this opinion to discuss in detail the evidence, which covers 650 printed pages, to point out that which tends to support the findings of the commission, which are material to its decision. It would be an unprofitable task. Besides, any expression of opinion by this court upon the sufficiency of the evidence upon any point might result in prejudice to others whose rights may be affected by the same testimony and *gacts*.

inferable therefrom in other litigation which may grow out of the transactions in question. In this connection, it may not be out of place to say that we do not agree with appellant's counsel that the finding of the commission of a conspiracy to defraud the State is an impeachment of the character for honesty and integrity of every stockholder, director and officer of the company. Corporations, like individuals, are bound by the acts of their agents within the scope of their authority, even those fraudulently done; and while the legal consequence of such acts must be visited upon the principals, it by no means follows that the principals can justly be charged with guilty participation in them. It is but fair to say that there is not a particle of testimony tending to show that some of the stockholders, directors, and officers of the company had any knowledge of the transactions which fell under the condemnation of the commission.

The first exception alleging error of law is that after the testimony had been taken, and the argument was about to commence, one of the commissioners stated to appellant's attorney that, from his recollection and knowledge of the testimony, there was a doubt in his mind whether the State owed appellant anything; that he was under the impression, from the testimony, that it showed that appellant owed the State a large sum of money on account of overcharges; and asked that his argument be directed to that point. It is con-

43 tended that this statement showed that the mind of the commission was prejudiced against appellant's claim, and that he was thereby disqualified to participate in the deliberations of the commission. Such a contention is clearly untenable. The commissioner distinctly stated that the impression made upon his mind was from reading the testimony. Ordinarily, the mind of every intelligent man is impressed one way or the other as to the weight of evidence and its sufficiency to establish the facts in issue as he hears or reads it. There is no impropriety in the trier of facts stating to counsel the impressions so made upon his mind, that he may have the opportunity of so presenting the evidence as to remove the impression, if possible. It is common practice for judges to state to counsel the bent of their minds as to the law or facts, so as to direct argument to the questions involved, and we have never heard the practice questioned or condemned. On the contrary, it is a distinct advantage to counsel in arguing a case.

The next contention or appellant is that the commission is not a court, but a special tribunal of limited power, and that it exceeded its authority in undertaking to fix and determine appellant's liability to the state, and then set off its claim against the liability so fixed. It is conceded that the commission is not a court, though its duties necessarily involve, to some extent, the exercise of judicial functions, as is always the case where judgment and discretion are to be exercised. It was created under Section 2 of Article 17 of the constitution, which provides that "the general assembly may direct by law in what manner claims against the State may be established and adjusted." State vs. Dispensary Commission, 79 S. C., 316. Of a like nature was the "Court of Claims," created under a similar provision of the constitution of 1868. Ex parte Childs, 12 S. C., 111.

This being so, the Commission is limited to the exercise of such powers as are expressly conferred upon it by the statutes, and such as are necessary implied from those conferred. This is true even of courts of special and limited jurisdiction. *McKensie v. Ramsey*, 1 Bail., 460. It is contended that authority "to pass upon, fix and determine all claims against the State" does not include authority to fix and determine claims in favor of the State against others. Such a construction of the statutes is too narrow, and unwarranted from their manifest purpose and intent. The commission was authorized and directed to determine what were the "just claims" against the State growing out of the business, and to *do* that end it was directed to investigate all transactions with the dispensary past and present. For what purpose? Evidently to enable it to decide what were the just liabilities of the State. And how could it decide what was the just liabilities of the State to a claimant without ascertaining what was the just liability of the claimant to the State growing out of his dealings with the dispensary? The determination of the one necessarily involved the other.

The question, therefore, whether the commission had authority to entertain a "set off" of a "counter claim" in favor of the State against a claimant, in the technical sense in which those terms are used in legal proceedings is not germane or material to the present inquiry. To what purpose should the commission investigate, unless it announced the result of its investigation? We see no error, therefore, in the Commission stating its findings as the result of its investigation.

The findings of the commission, however, are controlling only in its determination of the non-liability of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper court to recover the amount found by the Commission to be due it by appellant.

The exceptions assigning error in admitting in evidence certain testimony which had been taken by the investigating committee, appointed under the resolution hereinbefore referred to, cannot be sustained; because the record fails to show that objection was made to its introduction; on the contrary, it appears that it was introduced by consent. Besides, appellant was represented by counsel before 45 the committee and cross-examined the witnesses, except one, whose affidavit was admitted without objection; and after the testimony was admitted, the commission offered appellant opportunity to introduce testimony in rebuttal or to impeach the witnesses.

The next assignment of error is in admitting testimony to show that other manufacturers of glass had put in bids with the directors of the dispensary which were lower than the bids of appellant, which were accepted by the directors; and that appellant had, during the time it was furnishing the dispensary, sold bottles of the same kind to other buyers in smaller quantities at lower prices, because in dealing with the other buyers it had to meet competition, the contention being that appellant's bids having been accepted and contracts awarded upon them, such testimony was irrelevant. The testi-

mony was clearly relevant, because it tended to prove the charge of a conspiracy to defraud the State. If it be true, as contended, and as some of appellant's witnesses testified, that these smaller quantities were sold at lower prices merely to get rid of its remnants or surplus product, which was a very small per cent. of its output, that was a fact for consideration of the commission in determining the weight and sufficiency of the evidence, but it could not affect its relevancy.

We proceed next to dispose of the issues raised in the second case stated at the head of this opinion. These arise principally out of an act approved February 23rd, 1910, and what has been done by the defendants under the provisions of that act, which, it will be noted, was passed subsequent to the decision of the commission upon the claim of the plaintiff. The provisions of the first five sections of the act pertinent to this case are, in substance: That, in addition to the powers conferred by all previous acts, the dispensary commission shall have power to pass upon, fix and determine claims of the State against any person, firm or corporation heretofore doing business with the State dispensary, and settle and receipt therefor; that the findings of the commission under its provisions, shall be final, and upon the finding by the commission that 46 any person, firm or corporation in indebted to the State, the dispensary auditor and officials having charge of the funds of any county dispensary which may be indebted to such person, firm or corporation, shall pay to the commission the amount so found to be due the State, or so much thereof as the funds in their hands due to such person, firm or corporation will pay, and the receipt of the commission shall be a sufficient voucher therefor; that the commission may, by its order, stop the paying out of any funds of any county dispensary by an officer having charge thereof. Section- 7 and 9 of the act are as follows:

SEC. 7. The State dispensary commission is hereby empowered to pass all orders and judgments and do any and all things necessary to carry out the purposes of this act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this state, and a transcript of said judgment shall be filed in the office of the clerk of the Court of common please in each county where any property of such judgment debtor is situated.

SEC. 9. In all cases pending before the said State dispensary commission, upon any claim or claims against any person or persons or any corporation or corporations owning any real estate in any county in this State, the said commission shall file in the office of the Clerk of court in each county where such real estate is situated a notice of the pendency of such cases, and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon such real estate acquired subsequent to the filing thereof, and the debt found by said commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any

person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State.

Within a few days after the approval of the act, to wit, on February 26th, 1910, the commission, by its attorneys, filed in the office of the clerk of court for Richland county, in which county plaintiff owns real estate, a notice, headed or entitled, "The State vs. Carolina Glass Co." and signed by the attorney-general and other counsel representing the State. The notice was as follows: "Notice is hereby given to all whom it may concern, that the above stated cause has been instituted, and is now pending before the State dispensary commission for the recovery against the Carolina Glass Co. of \$29,000.00, the amount which has been found to be due from the said defendant to the State of South Carolina owing to overcharges made by the said defendant in selling goods to the State dispensary, and this notice is given in accordance with the terms of an act of the legislature passed in February, 1910, and duly approved by the Governor." About the same time, notice was served on the plaintiff, pursuant to the provisions of the act, that the commission would proceed to pass upon, fix and determine the claim of the State against the plaintiff on account of the overcharges growing out of its dealings with the dispensary. Notice was also served on the County dispensary board of Richland county, requiring that board to pay to the commission the amount due by said board to the plaintiff.

Another feature of the case grows out of an agreement alleged to have been made between the attorneys for the plaintiff and the attorney representing the State with regard to the payment for shipments of glass made by plaintiff to the county dispensaries after November 20, 1909. At the date of the decision of the Commission on plaintiff's claim, several of the county dispensaries were indebted to plaintiff for glass shipped prior to the decision, and plaintiff was under contract to make further shipments. But, fearing that payment of the amounts due it by the county dispensaries might be stopped by order of the commission, and being unwilling, in view of the possibility of such action, to make further shipments, without an agreement that payment therefor would not be withheld, the attorney representing the State in the matter of claims against the plaintiff and others for overcharges against the dispensary, agreed with plaintiff's attorney that payments for all shipments made after

November 20th, would not be interfered with by the commission. There seems to have been some misunderstanding 48 between the attorneys as to what the agreement was, or as to whether there was any agreement, with regard to the amounts then due the plaintiff for shipments previously made. No steps, however, were taken by the commission or the State's attorneys to stop the payment of such debts, and plaintiff continued to collect them, as well as those accruing after November 20th.

Upon the filing and serving of the notices above mentioned, this action was commenced in the original jurisdiction of this court to enjoin the defendants from ordering the sums due to plaintiff by the county dispensaries withheld or paid over to the commission, on

the ground that the act of the commission in fixing and determining the liability of plaintiff to the State was an excess of authority conferred by the statutes, and, therefore, null and void, and on the ground that the notice requiring the county board to pay to the commission the amounts due by it to plaintiff, in so far as it affected shipments made subsequent to November 25th, was a violation of the agreement with plaintiff's attorneys. Plaintiff also asks that the commission be enjoined from asserting or claiming a lien upon its real estate in favor of the State by virtue of the notice filed with the clerk of court for Richland county, on the ground that the sections of the act giving the State such lien upon the judgment of the commission, or the right to acquire it by reason of such judgment are unconstitutional.

Under the provisions of the constitution (Art. 8, Sec. 11) and statutes (25 Stat., 463) the county dispensaries are conducted "under the authority and in the name of the State." Therefore, the officers in charge of them are agents of the State and the funds arising from the sale of liquors through them are the funds of the State, and the debts due for goods sold to them are the debts of the State. In exercising the powers conferred upon it by the legislature, the dispensary commission is also the agent and representative of the State, "subject to no interference, except that of the general assembly itself,"

and a suit brought against it is, in effect a suit against
49 the State. *State v. Dispensary Commission*, 79 S. C., 316,

329. As the State cannot be sued without its consent, no court has power to interfere with or direct the disposition of the State's funds in the hands of its agents, unless it appears that they are acting without authority of law, or are refusing to recognize and obey the law to the detriment of private rights. In *State v. Dispensary Commission*, supra, at page 325, this court said: "The general assembly may require the public funds, or any part of them, to be put in any place or with any person it sees fit; and there is no limit to its powers in imposing conditions and conferring discretion on its fiscal agent as to the disbursements of these funds to its creditors. When a discretion is conferred by the State, no court can supplant the agent of the State and substitute for his discretion its own judgment." In ordering the funds in the hands of the officers of the county dispensaries due to the plaintiff turned over to itself, the commission acted within the limits of the authority and discretion conferred upon it by the legislature, and this court has no power to interfere. From the foregoing, it will be seen that it is unnecessary to inquire or decide whether there was an agreement between the attorneys for plaintiff and the attorneys for the State, as to the collections of the amounts due plaintiff from the county dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it has been violated. The dispensary commission is the sole arbitor of the rights of the plaintiff, if it has any, with regard to that matter.

The claim that the state has a lien upon the real estate of the plaintiff by virtue of the provisions of Section 7, and by virtue of the notice filed with the clerk of court under the provisions of sec-

tion 9 of the act of 1910, presents a serious and delicate question. Unless the provisions of Section 7 must be construed to be retroactive, the lien cannot be claimed under that section. The rule is too well settled to require discussion that a statute will not be construed so as to have retroactive effect, unless such construction is required by its express terms, or by a necessary implication. There are no words in the act expressly giving any of its provisions 50 retroactive effect, and there is no necessary implication from the language used that the legislature intended that it should have such effect. Therefore, when the legislature said, in section 7, that "all judgments rendered by them (the Commission) for any claim due the State shall be a lien on the property of the judgment debtor situated within this State," it meant all judgments rendered after the passage of the act, as the only judgment, in any sense of the word, rendered by the commission against the plaintiff was rendered before the passage of the act, no lien upon the property of the plaintiff was given or intended to be given by virtue of that judgment.

The constitution ordains (Art. 1, Sec. 14) that "the legislative executive and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." This language is as strong as it is simple and clear. The legislature therefore cannot assume to itself the exercise of judicial powers. *Seegars v. Parrott*, 54 S. C., 1. Nor can it confer "judicial powers," in the sense in which these words are used in the constitution, upon any other body than the courts mentioned and provided for in Section 1 of Ar. 5 of the constitution which provides that "the judicial powers of this State shall be vested in" the courts therein specifically mentioned and provided for. The few instances in which judicial power is vested elsewhere are provided for in the constitution itself, and with these few exceptions, the whole of the element of sovereignty known as judicial power was vested by the people in their courts, and none of it was left to be lodged elsewhere. In fact, every person exercising the functions of either of the other departments of the government are forbidden to assume or discharge those vested in the courts. We have already seen that the dispensary commission is not a court within the meaning of the judicial article of the constitution, but is a special tribunal created under the power of the legislature to investigate the financial affairs of the State, and that provision of the constitution which authorizes the legislature to direct by 51 law how claims against the State shall be established and adjusted.

It follows that any attempt to confer upon the commission judicial powers, except in so far as the exercise of such powers may be necessarily incident to the duty of investigating and ascertaining the truth with respect to the management of the dispensary, and the just liabilities of the State growing out of dealings with the dispensary, is violative of the constitution. The exercise of the judicial functions, or quasi judicial functions, is often necessary as an incident,

to the exercise of the powers conferred by the constitution upon the other co-ordinate branches of the government, as in all cases where the exercise of judgment and discretion are required. But this is not the judicial power vested in the courts. It would be difficult to give an exact definition of the words "judicial powers" as used in the constitution, which would be applicable to all cases which might arise, and we shall not attempt it. The lines of demarcation between the powers of the three departments of government are often shadowy and illusive; but in the main they are clear, well defined and well understood.

The constitution assumed the existence of an organized society, and when it vested the judicial power in the courts, it had reference to the judicial power then existing, and such as the people then understood to be vested in and exercised by the courts. There can be no doubt or difficulty therefore as to those powers, which, from the earliest periods in the history of our constitutional forms of government, have been exercised by the courts in the due and orderly interpretation and administration of the law. It has always and universally been deemed the prerogative of the courts to enforce and protect rights, prevent and redress wrongs, punish offenses against the public, and determine the rights, obligations and liabilities of persons arising out of their relations to and dealings with each other. It would not be contended for a moment that the legislature could, even upon the fullest, fairest and most deliberate investigation, after due notice, pass a valid act declaring that a particular individual is indebted to the State in a given amount,

52 and by legislative fiat create a lien upon his property. Such an act would not only be an unwarranted usurpation of judicial power, but would also be an infringement of the constitution guaranty that no person shall be deprived of his property without due process of law or be denied the equal protection of the laws. If, then, the legislature itself could not pass such a judgment, it cannot confer upon a commission the power to do so. The creature cannot be greater than the creator. The investigation of the dealings between the plaintiff and the State, the hearing of evidence and argument upon the facts and the law applicable thereto, and the determination of the rights of the plaintiff and the State growing thereout are so clearly an exercise of judicial power that the bare statement of the proposition is sufficient without argument to illustrate its truth. It was held to be such by this court in *State v. Dispensary Commission, supra*, where, at page 333, the court said: Their (the Commission's) discretion is a judicial discretion, and their action, without respect to the validity of claims, judicial action." So long, therefore, as the action of the commission was confined to the investigation of all dealings, past and present, with the dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the constitution for the legislature to provide by law how claims of the State against others shall be established or adjusted, except through the courts. We conclude, therefore, that in so far as the act of 1910 attempts to confer upon

the commission power to pass final judgment upon the claims of the state against the plaintiff, it is unconstitutional, null and void. And, as the lien which the act attempts to create is based upon the unauthorized act of the commission, it is likewise null and void.

The judgment of this court is that the decision of the Commission upon plaintiff's claim against the State be affirmed, and that the defendants be enjoined from asserting or claiming any lien upon plaintiff's property under or by virtue of the notice filed in 53 the office of Clerk of court for Richland county, and that said notice be cancelled of record.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

54

Authentication of Record.

Supreme Court, State of South Carolina, ss.

I, U. R. Brooks, clerk of said court, do hereby certify that the foregoing pages, numbered from one to 53, inclusive, are a true, full and complete transcript of the record and proceedings, in the case of Carolina Glass Company, Plaintiff, vs. The State of South Carolina, Defendant, and also of the opinion of the Court rendered therein, as the same now appears on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at my office in Columbia, South Carolina, this December 27th, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

55

Supreme Court of South Carolina.

No. 7724.

In the Matter of the Claim of

CAROLINA GLASS COMPANY

vs.

STATE OF SOUTH CAROLINA.

Assignment of Errors.

Now comes the Carolina Glass Company and files herewith its petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled case, and for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignments:

First. That the Supreme Court of South Carolina erred in holding and deciding that the method of procedure of the State Dispensary Commission in considering claimant's claim and in offsetting the same, when duly allowed and approved by said Commission, by a supposed claim of the State of South Carolina, on account of previous and other distinct and separate transactions between the said claimant and the said State of South Carolina, was not in violation of Section one of the Fourteenth Amendment, and Section ten or Article I of the Constitution of the United States and did not deprive claimant of its property without due process of law and deny to claimant the equal protection of the laws and trial by a jury, and impair the obligation of claimant's contract with the said State, out of which said claim arose.

Second. That the Supreme Court of South Carolina erred
56 in holding that, when no provision was made for the consideration of any distinct and separate claims of the said State of South Carolina against claimant, in the proceedings filed and taken by claimant before said State Dispensary Commission pursuant to the Act of the General Assembly of South Carolina, approved February 24th, 1908, entitled—

“An Act to Amend an Act entitled—‘An Act to provide for the disposition of all property Connected with the State Dispensary and to wind up its affairs,’ so as to provide Compensation for the Year 1908, and to Provide for the Sale of the Real Estate Heretofore Used in Conducting the Dispensary and to Further Provide for Winding up the Affairs of the State Dispensary”.

and when claimant had no notice in any way of any such claim or claims against claimant in favor of said State, by pleading or otherwise, and no opportunity to be heard thereon, claimant was not deprived of its property without due process of law and denied the equal protection of the law, and its contract rights impaired, in contravention of Section one of the Fourteenth Amendment, and Section ten of Article I of the Constitution of the United States, when the said Commission, having found claimant's claim to be legally and equitably due and owing it, undertook to adjudge that said claim was offset and wiped out by such other distinct and separate claim or claims of said State against claimant.

Third. Because the Supreme Court of South Carolina should have held and decided that the action of the State Dispensary Commission in offsetting and denying the claimant's claim was in violation of Section one of the Fourteenth Amendment and Section ten of Article

I of the Constitution of the United States because of the Statute, pursuant to which claimant's claim was filed, gave said Commission no jurisdiction to pass upon or determine claims of the State against claimant and because claimant had no notice of any such claim of the State, by pleading or otherwise, and no opportunity to be heard or to present evidence or argument thereon and was denied its right to a trial by jury thereon.

4. Because the Supreme Court of South Carolina should have held that claimant was deprived of its contract rights and property

without due process of law and denied the equal protection of the laws by the action of the State Dispensary Board in receiving and considering evidence and argument, over claimant's objection, concerning other claims of the State of South Carolina, arising out of other distinct and separate dealings between claimant and said State, as set-offs to deny payment of claimant's claim, when claimant had no notice or opportunity to be heard on such other claims.

For which errors, the Carolina Glass Company prays that the said judgment of the Supreme Court of South Carolina, dated November 29 1910, be reversed and a judgment rendered in its favor and for costs.

LYLES & LYLES,
JOHN T. SEIBELS,
D. W. ROBINSON,

Attorneys for Carolina Glass Company.

Columbia, S. C. November 4th 1912.

57½ [Endorsed:] Supreme Court of South Carolina. In the matter of the claim of Carolina Glass Company against State of South Carolina. Assignment of Errors. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, Clerk.

58

Supreme Court of South Carolina.

No. 7724.

In the Matter of the Claim of

CAROLINA GLASS COMPANY
against
STATE OF SOUTH CAROLINA.

Petition for Writ of Error.

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the Carolina Glass Company, Claimant, hereby prays a writ of error, from the said decision and judgment, to the Supreme Court of the United States, and an order fixing the amount of a bond for costs.

Assignment of errors herewith.

LYLES & LYLES,
JOHN T. SEIBELS,
D. W. ROBINSON,

Attorneys for Carolina Glass Company.

STATE OF SOUTH CAROLINA,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by the Carolina Glass Company to the State of South Carolina in the sum of two hundred and fifty dollars.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

Dated November 8, 1912.

58½ [Endorsed:] Supreme Court of South Carolina. In the matter of the Claim of Carolina Glass Company, against State of South Carolina. Petition for Writ of Error. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

59 STATE OF SOUTH CAROLINA,
Richland County:

CAROLINA GLASS COMPANY, Plaintiff in Error,
vs.
STATE OF SOUTH CAROLINA, Defendant in Error.

Bond.

Know all men by these presents, that we, the Carolina Glass Company as principal and John J. Seibels and B. F. Taylor as sureties, are held and firmly bound unto the State of South Carolina, in the sum of two hundred and fifty (250.00) dollars, to be paid to the said State, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals, and dated this thirtieth day of October, 1912.

Whereas, the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of South Carolina.

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be 60 adjudged if it shall fail to make good its plea, then this obligation will be void, otherwise to remain in full force and effect.

CAROLINA GLASS COMPANY,
By JOHN J. SEIBELS, *Its President.*
JOHN J. SEIBELS.
B. F. TAYLOR.

STATE OF SOUTH CAROLINA,
Richland County, ss:

John J. Seibels and B. F. Taylor, being each duly sworn, on oath depose and say: We are each of lawful age and are citizens of the State of South Carolina, and know the contents of the foregoing instrument to which we have attached our names. We each for himself say we are worth the sum of Two Hundred and Fifty (250.00) Dollars over and above all debts, liabilities and exemptions.

JOHN J. SEIBELS.
 B. F. TAYLOR.

Sworn to and subscribed before me this October 30th, 1912.

CHAS. B. ROBB,
Notary Public for South Carolina.

Bond Approved.

Dated November 8, 1912.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

A true copy.

Attest:

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Sup. Ct S. C.

60½ [Endorsed:] State of South Carolina, Richland County. Carolina Glass Company, Plaintiff in Error, against State of South Carolina, Defendant in Error. Bond. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal United States District Court, Eastern Dist. S. C.]

61

Writ of Error.

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Carolina Glass Company and the State of South Carolina, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity

of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Carolina Glass Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

62 then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 4 day of November, in the year of our Lord one thousand nine hundred and twelve.

[Seal United States District Court, Eastern District So. Ca.]

RICHARD W. HUTSON,
*Clerk District Court United States,
 District of South Carolina.*

Allowed
 November 8, 1912.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

62½ [Endorsed:] Supreme Court of the United States. In the Matter of the claim of Carolina Glass Company, Plaintiff in Error, against State of South Carolina, Defendant in Error. Writ or Error. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

63

Certificate of Lodgment.

SUPREME COURT,
State of South Carolina, ss:

I, U. R. Brooks, clerk of said court, do hereby certify that there was lodged with me as such clerk on November 14, 1912, in the matter of Carolina Glass Company versus State of South Carolina:

1. The original bond of which a copy is herein set forth.

2. Two copies of the writ of error, as herein set forth—one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in Columbia, South Carolina, this December 27th, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

64

*Citation.*THE UNITED STATES OF AMERICA, *ss.*:

The President of the United States to the State of South Carolina,
Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of South Carolina, wherein the Carolina Glass Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of South Carolina, the 8 day of November, 1912.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

Attest:

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Service acknowledged this 15th day of November, 1912.

J. FRASER LYON,
Attorney General,
Attorney of Record for State of South Carolina.

64½ [Endorsed:] Supreme Court of the United States. In the matter of the claim of Carolina Glass Company, Plaintiff in error, against State of South Carolina, Defendant in error. Citation. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

Return to Writ.

UNITED STATES OF AMERICA,
Supreme Court of South Carolina, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of South Carolina, in the City of Columbia, this December 27, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Statement of Costs.

Plaintiff's costs.....	\$521.00 paid by Carolina Glass Co.
Defendant's costs.....	\$25.00 paid by Carolina Glass Co.
Cost of transcript.....	\$17.50 paid by Carolina Glass Co.

U. R. BROOKS, *Clerk.*

Endorsed on cover: File No. 23,476. South Carolina Supreme Court. Term No. 408. The Carolina Glass Company, plaintiff in error, vs. The State of South Carolina. Filed December 30, 1912. File No. 23,476.

TRANSCRIPT OF RECORD

INSURANCE CO. OF NEW YORK CITY

vs. W. J. MURRAY

PLAINTIFF **204**

CAROLINA GLASS COMPANY, PLAINTIFF

W. J. MURRAY, DEFENDANT

AVOIDANCE OF CONTRACTUAL LIEN

PLAINTIFF'S DEMAND FOR JUDGMENT

PLAINTIFF'S DEMAND FOR JUDGMENT

(24,313)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 569.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

W. J. MURRAY, JOHN McSWEEN, ADOLPHUS N. WOOD,
AVERY PATTON, AND JAMES S. BRICE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.

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a-40 UNITED STATES OF AMERICA, 88:

At a United States Circuit Court of Appeals for the Fourth Circuit Begun and Held at the Court House, in the City of Richmond, on the First Tuesday — May, Being the Sixth Day of the Same Month, in the Year of our Lord One Thousand Nine Hundred and Thirteen.

Present:

Hon. J. C. Pritchard, Circuit Judge.
Hon. Benjamin F. Keller, District Judge.
Hon. Henry G. Connor, District Judge.

Among other were the following proceedings, to-wit:

CAROLINA GLASS COMPANY, Plaintiff in Error,
versus

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and
J. S. BRICE, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

Be it remembered that heretofore, to-wit: on January 10, 1913, the transcript of the record of the said District Court in the said entitled cause was transmitted to and filed in our said Circuit Court of Appeals here, which is as follows:

* * * * *

41 & 42 On the same day, to-wit: January 10, 1913, the original petition for a writ of error, order allowing writ of error, writ of error, writ of error bond and citation, were certified up to this Court in pursuance of Sec. 7 of Rule 14.

Same day, appearance of D. W. Robinson and Lyles & Lyles, is entered for the plaintiff in error.

January 17, 1913, appearance of W. F. Stevenson and B. L. Abney, is entered for the defendants in error.

January 28, 1913, twenty-five copies of the printed record are filed.

May 9, 1913 (May Term, 1913), cause came on to be heard before Pritchard, Circuit Judge, and Keller and Connor, District Judges, and is argued by counsel and submitted.

July 10, 1913 (May Term, 1913), the Court announced and filed its opinion, which is as follows, to-wit:

Opinion.

Filed July 10, 1913.

43 United States Circuit Court of Appeals, Fourth Circuit.
No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error,
versus

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and
J. S. BRICE, Defendants in Error.

In Error to the District Court of the United States for the Eastern
District of South Carolina, at Charleston.

[Argued May 9, 1913; Decided July 10, 1913.]

Before Pritchard, Circuit Judge, and Keller and Connor, District Judges.

J. B. S. Lyles and D. W. Robinson (Lyles & Lyles and J. T. Seibels on brief) for plaintiff in error, and W. F. Stevenson and B. L. Abney (C. L. Prince on brief) for defendants in error.

PRITCHARD, *Circuit Judge*:

This was an action at law instituted by the Carolina Glass Company, plaintiff in error (hereinafter referred to as plaintiff), against W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice, defendants in error (hereinafter referred to as defendants), to recover the sum of \$19,084.38 alleged to be due plaintiff by the several county Dispensary Boards of South Carolina.

When the case came on for trial the parties by written stipulation waived a jury trial, and the facts were found by the court below as follows:

"The complaint is in the nature of an action against the individual defendants for moneys by them had and received, and which moneys they ought ex aequo et bono to refund to the plaintiff as its property. The defendants were at one time members of the State Dispensary Commission, appointed under the Act approved 16 of February, 1907 (Stats. S. C., Vol. XXV, p. 855), and as such received a sum of money under the following circumstances, as appears by the testimony in the case, viz:

"By an Act approved 16 February, 1907 (Stats. of S. C., Vol. XXV, p. 463), the General Assembly of South Carolina enacted that wherever at the election in the Act provided for any county voted in favor of the sale of alcoholic liquors and beverages it should be lawful that the same should be sold in such county; and that thereupon a Board should be appointed to be known as the 'County Dis-

pensary Board,' who were authorized and required to establish Dispensaries in the County for the sale of alcoholic liquors and beverages under the forms and limitations prescribed in the Act. The Act also provided:

"SEC. 6. The members of the said County Dispensary Board are hereby declared to be County Officers and are hereby authorized and empowered under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: Provided, That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made."

"SEC. 11. Each Dispenser shall daily deposit to the credit of the County Board, in a bank designated by the Board, all moneys received by him from sales."

"SEC. 13. All sales shall be for cash and at a profit to be determined by the Board."

"By Sec. 18, it is provided that the County Dispensary Board should quarterly in each year make a sworn statement of the 45 profits and at the same time divide and pay out the profits as so ascertained in the proportion fixed by the Act of various public county purposes.

"The Act appointed a State Dispensary Commission although a separate act was approved on the same day as this last mentioned Act provided for County Dispensary Boards, viz: 16 of February, 1907. Under the Act of 16 of February, 1907, creating the State Dispensary Commission the Commission so created was directed to close out the entire business of the State Dispensary as carried on by the State prior to 16 of February, 1907, collect all debts due, and pay all just liabilities of the State growing out — the said business. The Commission was given full power and authority to investigate the past conduct of the affairs of the Dispensary. This act of 1907 was amended in 1908 so as to give the Commission full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary and to pay for the State any and all just claims which have been submitted to and determined by it and no other. (Stats. S. C., Vol. XXV, p. 1293.)

"The plaintiff in this case had furnished the State with bottles and demijohns used in the business of the State Dispensary as carried on prior to 16 of February, 1907, and had a claim therefor against the State for \$23,013.75. This claim the plaintiff presented to the State Dispensary Commission, who, after investigation, found that in pursuance of a conspiracy between some of the directors of the State Dispensary and some of the plaintiff's officers or agents to defraud the State the latter had paid the plaintiff on glassware purchased between 1902 and April, 1906, a price exceeding the fair market value thereof by \$51,432.94. Therefore allowing plaintiff's claim of \$23,013.75, the Commission found that plaintiff was indebted to the State in the sum of \$28,419.24, the difference between the amount of its claims and the sum it had fraudulently collected from the State prior to April, 1906.

"From this decision of the Commission an appeal was taken under

the provisions of the Act of 1907 to the Supreme Court of South Carolina. This appeal was heard by that court, which on 17th of November, 1910, rendered its decision held that the plaintiff had no claim against the State. That court held further:

“The findings of the Commission, however, are controlling only in its determination of the non-liability of the State upon 46 appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper court to recover the amount found by the Commission to be due it by appellant.”

“And again:

“So long, therefore, as the action of the Commission was confined to the investigation of all dealings, past and present, with the Dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the Constitution for the Legislature to provide by law how claims of the State against others shall be established or adjusted except through the courts. We conclude, therefore, that in so far as the Act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff it is unconstitutional, null and void.” Carolina Glass Co. v. State of S. C., 87 S. C., 270.

“In the meantime, and after the creation of the County Dispensary Board under the Act of 16 of February, 1907, the plaintiff from time to time furnished the County Dispensary Board for Richland County glassware under purchases made from it by that Board, and on 23 of February, 1910, there was admittedly due to the plaintiff for these purchases the sum of \$4,963.13. On the 23 of February, 1910 (Stats. S. C., vol. XIV, p. 876), by an Act of the General Assembly of South Carolina, approved that day it was provided:

“SEC. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing, and all Boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all County Dispensaries heretofore existing, shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State.”

Subsequent to the 23rd of February, 1910, and between 47 that date and 13th of December, 1910, the plaintiff delivered to the County Dispensary Board for Richland County additional supplies of glassware for which there was admittedly due to plaintiff \$12,586.64, which added to the \$4,963.13 due on 23rd of February, 1910, made a total of \$17,550.07 admittedly due to plaintiff on December 13, 1910.

“On that day, viz., 13 of December, 1910, the County Dispensary Board for Richland County paid the sum of \$17,550.07 to the State

Dispensary Commission under the circumstances stated in the receipt given for the same, viz:

"COLUMBIA, S. C., Dec. 13, 1910.

"Received from the Richland County Dispensary Board the sum of seventeen thousand five hundred and fifty 07-100 (\$17,550.07) dollars. Being the amount in the hands of the Richland County Dispensary Board to the credit of the Carolina Glass Company for goods and merchandise bought by the Richland County Dispensary Board from the Carolina Glass Company, which amount is paid to the State Dispensary Commission upon its demand made in pursuance of the provisions of the Act of the General Assembly entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved 23 day of February, 1910; and in pursuance of the judgment of the Supreme Court in the case of the Carolina Glass Company vs. Dr. W. J. Murray, et al.

"STATE DISPENSARY COMMISSION,

"By W. J. MURRAY, *Chairman.*

"\$17,550.07.

"On the 22 of November, 1910 (after the filing of the opinion of the Supreme Court of South Carolina in Glass Company v. State of S. C.), the plaintiff in this case gave the defendants personal notice that they would be held personally liable for any funds due to plaintiff by any County Dispensary Board which the defendants should hold and not pay over to the plaintiff.

"On receiving this amount of \$17,550.07 the defendants held it until 27 of March, 1911, when they turned it over to the persons who had been appointed as members of the State Dispensary Commission in succession to the present defendants who has ceased to be such.

"The contention of plaintiff is that this amount of \$17,550.07 was a fund to which plaintiff is and was entitled, and it came 48 into the hands of the defendants on 13 of December, 1910, under circumstances which fully notified the defendants that ex aequo et bono they were bound to pay it to plaintiff and that the action of defendants in turning it over on 27 of March, 1911, to their successors in office was tortious and unlawful after the notice of 22 of November, 1910, and leaves defendants personally responsible for the amount.

"The jurisdiction of this court is invoked on the ground that the Act of 23 of February, 1910, is in contravention of Section 10, Art. 1, of the United States Constitution as impairing the obligation of the contract whereby under the Act of 16 of February, 1907, the County Dispensary Board was bound to pay to plaintiff the amount admittedly due for the glassware furnished by it, and is further in contravention of the XIVth Amendment of the United States Constitution in that it seeks without due process of law to take the amount of \$17,550.07 admittedly due to plaintiff and arbitrarily apply it to the payment of a contested claim made by the State, not yet judicially established, for \$28,419.24 against the plaintiff."

The court below after having found the facts, also discussed at some length the merits of the case. But at the same time reached the conclusion that this was a suit against the State, and dismissed the same for want of jurisdiction.

There are seven assignments of error. However, in view of the action of the lower court in dismissing the same for want of jurisdiction, we only deem it necessary to consider the fifth, which is in the following language:

"That the court erred in ruling as a matter of law, upon the undisputed facts, that this suit is a suit against the State of South Carolina and to which the said State is a necessary party, and so is within the express prohibition of the 11th Amendment of the Constitution of the United States.

"Whereas, the court should have ruled that the suit is one brought by plaintiff to recover money illegally confiscated and redress grievances illegally inflicted by the individual defendants, claiming to act as the State Dispensary Commission by virtue of the authority given them by section 6 of the Act of 1910, when the said Act is, and always has been null and void, because in Section 10 of Article I, and the 14th Amendment of the Constitution of the United States, and therefore, afforded no protection or color of authority for the illegal acts of the defendants."

49 In order to determine whether this is a suit against the State, we must ascertain to whom the fund of \$17,550.07 belonged, both before and after it reached the hands of the defendants.

Section 6 of the Acts of 1907 authorizes and empowers County Boards in the name, and under the authority of the State to buy in any market, and to retail within the State, liquors and beverages. If the liquor and beverages were purchased by the Dispensary Board in pursuance of this act, it necessarily follows that in so doing, such boards were acting for, and on behalf of the State, and any purchases made, or funds realized from the sale of the same in pursuance thereof, thereby became the property of the State and subject to its control as such. The fact that the county dispensary boards are declared to be county officers in no wise affects the ownership of the State of any property that may have been purchased by such boards. The State has as much right to constitute county officers its agents as it would to employ any other person or persons to act in its behalf in the transaction of its business, and this is precisely what it did in this instance. The mere designation of these officials as county officers could not deprive the State of any right to property which it may have purchased through them while they were acting in pursuance of authority granted by the State. A careful examination of the constitution, as well as the act of South Carolina as respects the Dispensary, clearly shows that it was the policy of that State to retain complete control over the purchase and sale of liquors as well as the title to the same.

Among other things, it is provided by the act in question that the State shall not be liable beyond the actual assets of the Dispensary for which the purchases are made. The foregoing clearly indicates that while the State stands back of the Dispensary Board in the pur-

chase of goods, yet, it is not liable for any debts that such boards may have incurred in excess of the actual assets of the Dispensary.

This was a precautionary measure, intended to protect the State in cases where the Board should attempt to contract debts beyond the amount of assets, and was notice to the world that the State would only pay such debts as were not in excess of the assets of the Dispensary.

These provisions clearly indicate that it was the purpose of the Legislature to make the Dispensary Board subordinate to, and under the control of the State in all particulars, and at all times, so long as they continued in business; and among other things, it is provided that after certain expenses are paid, and the proportion allotted to the county was set apart for that purpose, that any net profits were to be accounted for to the State, and retained by it as its property.

The Supreme Court of the State of South Carolina in construing Section 6 of the Acts of 1907, held that these County Dispensaries were conducted under the authority, and in the name of the State.

This question was before the Supreme Court of that state in the case of State v. Dispensary Commission, 79 S. C., 325, the court, among other things, said: "The General Assembly may require the public funds or any part of them to be put in any place, or with any person it sees fit; and there is no limit to its power in imposing conditions and conferring discretion on its fiscal agent for the disbursement of these funds to its creditors." And also in the case of State v. Dispensary Commission, 79 S. C., page 326, the Supreme Court of that State quoted with approval the ruling of the Supreme Court of the United States in the case of Buchanan v. Alexander, 4 Howard, 20, in which that court said, that, "so long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the Treasurer."

The Supreme Court of the United States in the case of Murray v. Wilson Distilling Company, 213 U. S., page 151, referring to the provisions of the Constitution and statute of that state as respects the Dispensary question, said:

"If we consider as an original question the provisions of the Constitution of South Carolina on the subject and the terms of the statutes of that State establishing the Dispensary System, we think it is apparent that the purchases which were made by the State officers, or agents, of liquor for consumption in South Carolina, were purchases made by the State for its account, and, therefore, that the relation of debtor and creditor arose from such transactions between the State and the persons who sold the liquor. And this irresistible conclusion, arising from the very face of the constitution and statutes, is removed beyond all possible controversy by the decision of this court in Vance v. Vandercock, No. 1, *supra*, and by the construction given by the Supreme Court of South Carolina to the State statute prior to the commencement of this litigation, in State v. Farnum, *supra*, as well as by the convincing opinion expressed by that court in reviewing the state statutes in the mandamus case already referred to as reported in 79 S. Car., 316.

"We could not therefore sustain the exercise of jurisdiction by

the Circuit Court without in effect deciding that the State can be compelled by compulsory judicial process to perform a contract obligation. It is certain that at least by indirection, the bills of complaint sought to compel the State to specifically perform alleged contracts with the vendors of liquor by paying for liquor alleged to have been supplied. But it is settled that a bill in equity to compel the specific performance of a contract between individuals and a State cannot, against the objection of the State, be maintained in a court of the United States. Thus, in *Hagood v. Southern*, 117 U. S., 52, where, in suits brought in a court of the United States against officers and agents of the State of South Carolina, the holders of certain revenue scrip of the State endeavored to enforce the redemption thereof according to the terms of the statute, in pursuance of which the scrip was issued, which statute was alleged to constitute an irrepealable contract, the court said:

"Though not nominally a party to the record, it (the State) is the real and only party in interest, the nominal defendants being the officers and agents of the State, having no personal interest in the subject-matter of the suit, and defending only as representing the State. And the things required by the decrees to be done and performed by them are the very things which, when done and performed, constitute a performance of the alleged contract by the State. The State is not only the real party to the controversy, but the real party against which relief is sought by the suit; and the suit is, therefore, substantially within the prohibition of the Eleventh Amendment of the Constitution of the United States, which declares that 'The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign State'"

* * *. The absence in the winding up act of a provision conferring authority to review in the ordinary courts of justice the action of the commission concerning claims, instead of supporting the contention that the State had abandoned all property right in the funds placed in the hands of the commission, tends to a contrary conclusion since it at once suggests the evident purpose of the State to confine the determination of the amount of its liability to claimants, to the officers or agents chosen by the State for that purpose. And it is elementary that even if a State has consented to be sued in its own courts by one of its creditors, a right would not exist in such creditor to sue the State in a court of the United States. *Smith v. Reeves*, 178 U. S., 436, and cases cited; *Chandler v. Dix*, 194 U. S., 590. The situation, therefore, was not changed as a result of the subsequent act of February 24, 1908, giving the creditors of the State, whose claims might be adversely acted upon by the commission, the right to a review in the Supreme Court of the State."

We have carefully considered the authorities relied upon by plaintiff, but are of the opinion that they do not apply to the case at bar.

In view of the decisions of the Supreme Court of South Carolina, as well as the decision of the Supreme Court of the United States,

we are impelled to the conclusion that the State is a necessary party to this action. Such being the case, the ruling of the lower court in dismissing the same for want of jurisdiction was eminently proper.

For the reasons stated, the judgment of the lower court is affirmed.
Affirmed.

53 & 54 Same day, to-wit: July 10, 1913, the Court made and entered the following judgment, to-wit:

Judgment.

Filed and Entered July 10, 1913.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error,

vs.

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of South Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby affirmed with costs.

J. C. PRITCHARD, Judge.

July 10th, 1913.

Afterwards, to-wit: August 11, 1913, the mandate of this Court is issued and transmitted to the said District Court of the United States for the Eastern District of South Carolina, at Charleston.

Same day, the original petition for a writ of error, order allowing writ of error, and writ of error bond, certified up to this
55 & 56 Court, are returned to the said District Court in accordance with Sec. 7 of Rule 14.

Petition for Writ of Error and Order Allowing Same.

Filed May 7, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error,

vs.

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and
J. S. BRICE, Defendants in Error.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

Considering itself aggrieved by the final decision of the United States Circuit Court of Appeals for the Fourth Circuit in rendering judgment against it in the above entitled case, the plaintiff in error, Carolina Glass Company, hereby prays a writ of error, from the said decision and judgment, to the Supreme Court of the United States, and an order fixing the amount of a costs bond.

Assignment of errors herewith.

WM. H. LYLES,
D. W. ROBINSON,
LYLES & LYLES,*Attorneys for Plaintiff, Carolina Glass Company.*

57 & 58

*Order of Allowance.*UNITED STATES CIRCUIT COURT OF APPEALS,
Fourth Circuit, ss:

Let the writ of error issue upon the execution of a bond by the Carolina Glass Company to the defendants in error above named, in the sum of two hundred and fifty (\$250) dollars.

J. C. PRITCHARD,
*Judge United States Circuit Court
of Appeals for Fourth Circuit.*

May 7th, 1914.

Assignment of Errors.

Filed May 7, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error,

vs.

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and
J. S. BRICE, Defendants in Error.

Now comes the Carolina Glass Company and files herewith its petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having same reviewed in the Supreme Court of the United States, makes the following assignments:

1. That the United States Circuit Court of Appeals for the Fourth Circuit erred in ruling and deciding that this suit is a suit against the State of South Carolina, and that the State is a necessary party to this action. Whereas, the said United States Circuit 59 & 60 Court of Appeals for the Fourth Circuit should have ruled that the suit is one brought by plaintiff to recover money illegally confiscated and redress grievances illegally inflicted by the individual defendants, claiming to act as the State Dispensary Commission by virtue of the authority given them by section 6 of the Act of 1910, when the said Act is, and always has been null and void, because in contravention of Section 10 of Article I, and the 14th Amendment of the Constitution of the United States, and therefore, afforded no protection or color of authority for the illegal acts of the defendants.

2. Because said United States Circuit Court of Appeals for the Fourth Circuit erred in affirming the ruling and judgment of the District Court of the United States for the Eastern District of South Carolina in dismissing the Complaint for want of jurisdiction upon the ground that the State of South Carolina is a necessary party to this action.

3. Because said United States Circuit Court of Appeals for the Fourth Circuit was without jurisdiction to render judgment in the cause, since the case was one in which the writ of error should have been taken from the District Court of the United States for the Eastern District of South Carolina direct to the Supreme Court of the United States, and the jurisdiction of the said latter Court was exclusive under and by virtue of Section 5 of the Judiciary Act of March 3rd, 1891, now appearing as Section 238 of the Judicial Code, approved March 3rd, 1911.

Wherefore, Carolina Glass Company, the plaintiff in error, prays that the judgment of the United States Circuit Court of Appeals for the Fourth Circuit be reversed and vacated, and that said United

States Circuit Court of Appeals for the Fourth Circuit be directed to issue its mandate to the District Court of the United States for the Eastern District of South Carolina, directing said latter 61 & 62 Court to enter judgment in favor of the plaintiff in error in this cause against the said defendants, W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice and each and every of them, for the sum of seventeen thousand, seven hundred and fifty and 7/100 (\$17,750.07) dollars, together with interest thereon from the 13th day of December, 1910, at the rate of seven per cent. per annum and for the costs.

WM. H. LYLES,
D. W. ROBINSON,
LYLES & LYLES,
Attorneys for Plaintiff in Error,
Plaintiff in Lower Court.

Bond.

Filed May 7, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error,

vs.

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Defendants in Error.

Know All Men by These Presents, That we, Carolina Glass Company, as principal, and United States Fidelity & Guaranty Company, as surety, are firmly held and bound unto W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice in the sum of two hundred and fifty (\$250) dollars, to be paid to said parties, to which payment well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals and dated this 25th day of April, 1914.

Whereas the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to 63 & 64 reverse the judgment rendered in the above entitled action by the Circuit Court of Appeals for the Fourth Circuit,

Now, Therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged, if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

In Witness Whereof, the said Carolina Glass Company, as principal, and United States Fidelity — Guaranty Company, as surety,

have hereunto set their hands and affixed their seals, this 25th day of April, A. D., 1914.

CAROLINA GLASS COMPANY, [L. S.]
By RAVENEL S. PATTERSON,

Its Manager, as Principal.

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY,
By ROBT. MOORMAN,
A. W. BOLLIN,

Its Attorneys in Fact, as Surety.

[Seal of U. S. Fidelity & Guaranty Co.]

In the Presence of:

CARRIE YOUNGINER,
W. M. RISER,

As to Carolina Glass Company.

J. H. BOLLIN, JR.,
S. A. MILLFORD,

*As to United States Fidelity
& Guaranty Company.*

STATE OF SOUTH CAROLINA,
Richland County:

Personally appears W. M. Riser, who being duly sworn, says that she saw Carolina Glass Company, by Ravenel S. Patterson, its Manager, sign, seal and as its act and deed, deliver the above written bond for the uses and purposes therein mentioned, and that she with Carrie Younginer witnessed the execution thereof.

W. M. RISER.

Sworn to before me, this the 1st day of May, A. D. 1914.

[SEAL.]

W. S. WILSON, [L. S.]
Notary Public for S. C.

65 & 66 STATE OF SOUTH CAROLINA,
Richland County:

Personally appears S. S. Millford, who being duly sworn, says that he saw United States Fidelity & Guaranty Company, by A. W. Bollin and Robert Moorman, its Attorneys in Fact, sign, seal and as its act and deed, deliver the above written bond for the uses and purposes therein mentioned and that he with J. H. Bollin Jr. witnessed the execution thereof.

S. A. MILLFORD.

Sworn to before me, this the 2nd day of May, 1914.

[SEAL.]

J. HUGHES COOPER, [L. S.]
Notary Public for S. C.

Bond approved:

J. C. PRITCHARD,
U. S. Circuit Judge.

May 7th, 1914.

67

Writ of Error.

Issued May 7, 1914.

UNITED STATES OF AMERICA, *ss.*:

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit,
Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals, before you, or some of you, between Carolina Glass Company, plaintiff, and William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, defendants, a manifest error hath happened, to the great damage of the said plaintiff, Carolina Glass Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the said Supreme Court, the 7th day of May, in the year of our Lord one thousand nine hundred and fourteen.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
*Clerk United States Circuit Court
of Appeals for the Fourth Circuit.*

68 Allowed by:

J. C. PRITCHARD,
United States Circuit Judge for the Fourth Circuit.

May 7th, 1914.

Service of Writ of Error.

Copy of writ of error for adverse party lodged in the Clerk's Office this 7th day of May, 1914.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

69 [Endorsed:] The United States of America. Carolina Glass Company, Plaintiff, vs. William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, Defendants. Writ of Error. Filed May 7, 1914. Henry T. Meloney, Clerk.

70 *Citation.*

Issued May 7, 1914.

UNITED STATES OF AMERICA, *ss.*:

To William J. Murray, John McSween, Adolphus N. Wood, Avery Patton, and James S. Brice, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's office of the United States Circuit Court of Appeals for the Fourth Circuit, wherein Carolina Glass Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. C. Pritchard, Circuit Judge of the United States for the Fourth Circuit, this 7th day of May, in the year of our Lord one thousand nine hundred and fourteen.

J. C. PRITCHARD,
United States Circuit Judge for the Fourth Circuit.

71 [Endorsed:] The United States of America. Carolina Glass Company, Plaintiff, vs. William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, Defendants. Citation. Filed May 7, 1914. Henry T. Meloney, Clerk.

Service of the within Citation acknowledged and copy retained, this May 11, 1914, not waiving, but reserving to the State, its right to object to the issuance of said writ, or any proceedings thereunder, as also to the jurisdiction of the Court to hear and determine this case upon such writ of error.

B. L. ABNEY,
Attorney for Defendants in error.

72 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *ss.*:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit at Richmond, this 19th day of May A. D. 1914.

[Seal United States Circuit Court of Appeals, Fourth District.]

HENRY T. MELONEY,
*Clerk U. S. Circuit Court of
Appeals, Fourth Circuit.*

Endorsed on cover: File No. 24,313. U. S. Circuit Court Appeals, 4th Circuit. Term No. 569. Carolina Glass Company, plaintiff in error, vs. William J. Murray, John McSween, Adolphus N. Wood, Avery Patton, and James S. Brice. Filed July 16, 1914. File No. 24,313.

TRANSCRIPT OF RECORD

CLERK'S COURT OF THE UNITED STATES

CHARLESTON, SOUTH CAROLINA

No. [REDACTED] 205

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.
WILLIAM J. MURRAY, JOHN MCSEWEN, ADOLPHUS W.
WOOD, AVERY PATTON, AND JAMES S. BRICE.

REASON TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF SOUTH CAROLINA.

FILED JULY 14, 1914.

(24,314)

(24,314)

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1914.

No. 570.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR.

vs.

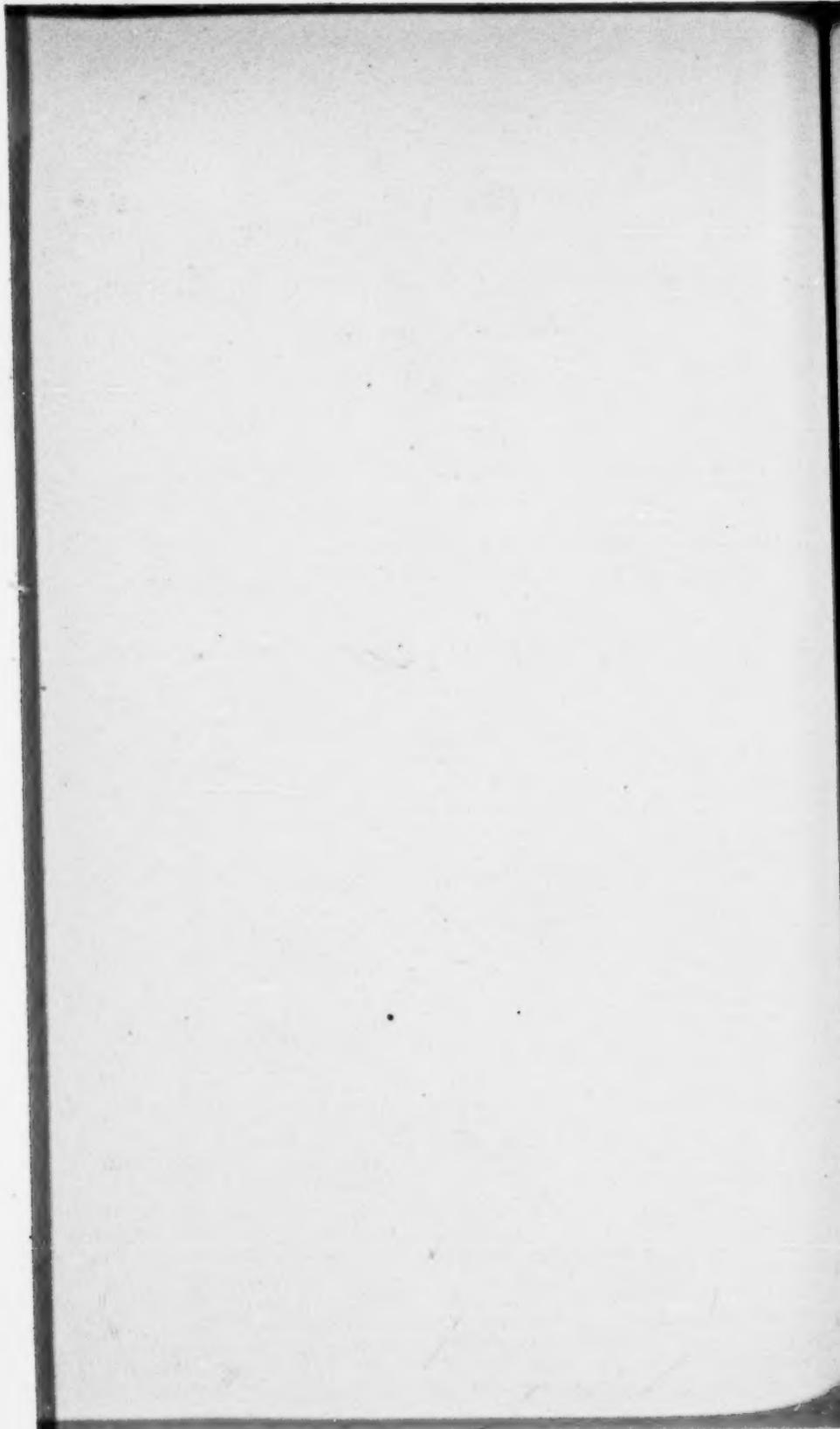
WILLIAM J. MURRAY, JOHN McSWEEN, ADOLPHUS N
WOOD, AVERY PATTON, AND JAMES S. BRICE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF SOUTH CAROLINA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 27, 1914.



Transcript of Record.

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina, To wit:

At a District Court of the United States for the Eastern District of South Carolina, Begun and Held at the Court House, in the City of Charleston, S. C., on the First Tuesday of June, Being the 4th Day of the Same Month, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present: The Honourable Henry A. M. Smith, District Judge, for the Eastern District of South Carolina.

Among other were the following proceedings, *to-wit*:

In Equity.

CAROLINA GLASS COMPANY, Complainant,
versus

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and
J. S. BRICE, Defendants.

Complaint.

Filed December 13, 1911.

UNITED STATES OF AMERICA,
District of South Carolina:

In the Circuit Court.

CAROLINA GLASS COMPANY, Plaintiff,
vs.

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and
J. S. BRICE, Defendants.

2 The plaintiff above named, complaining of the above named defendants, alleges:

1. That the plaintiff is, and was at the times hereinafter named, a corporation duly organized and existing under the laws of the State of South Carolina, having its principal place of business at the City of Columbia, in said State; and having been, and still being, engaged in the business of manufacturing and selling glass bottles, demijohns, etc.

2. That at the times hereinafter named, the defendants above named constituted the State Dispensary Commission, having been duly appointed and qualified by his Excellency, the Governor of

the State of South Carolina, under an Act entitled "An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs," approved the 10th day of February, 1907, and the subsequent Acts of the General Assembly of the State of South Carolina amendatory thereto.

3. That by an Act of the General Assembly of the State of South Carolina entitled "An Act to declare the law in reference to and to regulate the manufacture, sale, use, consumption, possession, transportation and disposition of alcoholic liquors and beverages within the State, and to police the same," approved the 16th day of February 1907, County Dispensary Boards were duly established for the counties of Clarendon, Richland, Beaufort and Georgetown, in the State of South Carolina, with authority to purchase glass bottles and demijohns for the conducting of the bottling and selling of liquors, beers, etc. Under the provisions of said statute and by the authority conferred by the said Act and Acts amendatory thereto, the said several County Dispensary Boards purchased from this plaintiff, from time to time, supplies of such glass bottles, demijohns, etc., as were needed for their business aforesaid.

3 4. That by section 6 of said Act, amongst other things, it was provided:

"That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made. The members of the County Dispensary Board and all Dispensaries shall be persons of known moral character and not directly or indirectly applicants for appointment."

And by the ninth section thereof it was provided:

"The County Dispensary Board shall, during the first week of each month, make a sworn statement of the receipts, expenditures and liabilities of each Dispensary for the preceding month, and cause the same to be published once in some newspaper published in the county during that week."

And by the eleventh section thereof it was provided:

"Each Dispenser shall daily deposit, to the credit of the County Board, in a bank designated by the Board, all monies received by him from sales."

And by the eighteenth section thereof it was provided that on the first days of January, April, July and October, in every year, the County Dispensary Board should file with the clerk of court a sworn statement of the profits of each Dispensary in the county for the three months preceding said dates, and should pay over, as in said section provided, the said profits. But it was nowhere provided in said Act that any part of the assets, whether representing liabilities or profits of the said several County Dispensary Boards, should, under any circumstances, be paid over to the State of South Carolina, or in anywise be covered into the treasury of said State. And this

plaintiff alleges that it was contemplated by the said Act that 4 the funds of the said several County Dispensary Board should be kept as trust funds, for the discharge first of all liabilities incurred by said several County Dispensary Boards, and

that only the profits then remaining should be paid out or distributed by the said several County Dispensary Boards.

5. That pursuant to said Act, a Dispensary Auditor was appointed by the Governor of the State of South Carolina, with power to audit the accounts of said several County Dispensary Boards and to prescribe the system of bookkeeping, etc.

6. That at the times hereinafter named, there were balances due by the said several County Dispensary Boards to this plaintiff, as follows, *to-wit*:

By the Clarendon County Dispensary Board	\$96.47
By the Richland County Dispensary Board	17,550.07
By the Beaufort County Dispensary Board	777.16
By the Georgetown County Dispensary Board	660.68
 Making a total of	 \$19,084.38

all of which claims had been duly audited and approved by the said Dispensary Auditor for the State of South Carolina, and the said several County Dispensary Boards held the funds appropriated and ready to pay over to this plaintiff in satisfaction of said several balances.

7. That for several years prior to the year 1906, this plaintiff sold and delivered under regular contracts to the State Dispensary glass bottles, demijohns, etc.; and during the year 1906 and in the early part of the year 1907, under contracts made with the Board of Directors of the State Dispensary, sold and delivered to it bottles, demijohns, etc., of the value of ninety-nine thousand one hundred and eight dollars (\$99,108.00), according to the special bids

5 then and there entered into, all previous contracts of the said State Dispensary having been cancelled by a joint resolution of the General Assembly of the State of South Carolina at its session of 1906, upon which there was a balance due to this plaintiff of twenty-three thousand and thirteen and 75/100 dollars (\$23,013.75), which is still due and unpaid.

8. That the said State Dispensary Commission having been organized and proceeding under the Act approved the 24th day of February, 1908, this plaintiff filed with the said State Dispensary Commission a statement of its claim of twenty-three thousand and thirteen and 75/100 dollars (\$23,013.75) and offered evidence to show the validity and justice of the same.

9. That thereafter, *to-wit*, on the 17th day of November 1909, the said State Dispensary Commission filed its finding or judgment upon the said claim, which, after reciting certain proceedings, proceeded as follows, *to-wit*:

"The Commission finds that the total amount of sales after making all proper corrections therein, made by the Carolina Glass Company during the entire period of the transactions with the State Dispensary up to the time it was abolished, was \$613,437. Of this amount the sum of \$99,108.00 was for goods sold during the year 1906 and the short period during 1907 during which that Dispensary was conducted, so that the total sales made by the Carolina Glass

Company during the years preceding the year 1906 aggregated \$514,329.90.

6 "The Commission finds that beginning early in the year 1906, as the result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina and the resolutions adopted by the General Assembly relating especially to the contracts with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did lower its bids to prices which during that year and the short period of 1907 during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906 the overcharges made in excess of the fair and reasonable market price for the goods sold was \$51,432.99, which should be and is hereby offset against the claim in favour of said Carolina Glass Company, to-wit: its claim for \$23,013.75, which, being deducted from the amount of said over-charges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of \$28,419.24.

"Whereupon judgment is rendered in accordance with the foregoing findings.

"Signed this November 17th, 1909.

"W. J. MURRAY—No.
"JOHN McSWEEN—No.
"A. N. WOOD.
"AVERY PATTON.
"J. S. BRICE."

10. That this plaintiff submits that no question of the right of the State of South Carolina against said plaintiff on account of transactions prior to 1906, by offset, counter-claim or otherwise, was before the said State Dispensary Commission by any notice or other pleading of any character, and that the said 7 Commission, being a court whose jurisdiction was limited to the consideration of and passing upon claims made against the State of South Carolina on account of the State Dispensary, had no power to consider the supposed claim of the State of South Carolina against the claimant on account of transactions which had occurred prior to the year 1906. And this plaintiff avers the finding of said State Dispensary Commission and its so-called overjudgment, or judgment for the balance of \$28,416.24, wholly null and void and of no effect whatever.

11. That this plaintiff since the organization of the County Dispensaries had been selling to certain of them bottles for their use, and on or about the 20th day of November 1909, had orders for the prompt shipment of such bottles to the County Dispensary for the County of Richland, and to the County Dispensary for the County of Aiken, and others, and on or about said date, learning through the newspapers of the State of South Carolina that his Excellency, the Governor of the State, at the instance and request of

the State Dispensary Commission, had issued orders to the Dispensary Auditor and to the County Dispensaries, directing them to withhold the amounts that might be due by the said County Dispensaries to certain persons and corporations, this plaintiff caused its attorneys, Messrs. John T. Seibels and Wm. H. Lyles, on its behalf to approach his Excellency, the Governor, and Hon. J. Fraser Lyon, Attorney General of the State of South Carolina, and to state to them the condition of affairs with reference to such orders, and that plaintiff's said counsel were referred by the Governor and the Attorney General to W. F. Stevenson, Esq., who was said to have charge of the matter in question. And, thereupon, on said 20th day of November 1909, one of plaintiff's counsel, Mr. Wm. H.

8 Lyles, called up the said W. F. Stevenson, Esq., then at Cheraw, in the State of South Carolina, over the long-distance telephone, and stated to him, in substance, the conversations which had occurred between him and Mr. John T. Seibels on the one side, and the Governor and Attorney General on the other, and was informed by the said W. F. Stevenson, Esq., that no action would be taken to interfere with or hold up the amounts that might become due to the plaintiff on account of goods that might be sold or shipped to the said County Dispensaries on or after the said 20th day of November 1909, and being requested by the said Wm. H. Lyles to give him such statement in writing the said W. F. Stevenson, Esq., on the said 20th day of November 1909, wrote to plaintiff's said attorney a letter, as follows, to-wit:

"Stevenson & Matheson,
"Attorneys at Law,

"CHERAW, S. C., Nov. 20, '09.

"Mr. Wm. H. Lyles, Att'y., Columbia, S. C.

"MY DEAR SIR: Representing the interests concerned in collecting the back debts of the State Dispensary for overcharges, I will say that as far as shipments and deliveries to be made to the County Dispensaries are concerned. I will not ask that the money be held so as in any way to interfere with the money coming for any shipments made today or hereafter, until further notice. It being the intent of this letter to enable the Glass Co. to do business without interference from us in that way, from this time until such time as we may decide to change our policy. If we decide to change our policy as to that, we will give you timely notice, and it will affect no shipments made in the meanwhile. The company being a resident corporation, we hav'n't the difficulty as to jurisdiction which we have in other cases. I will confer with you as to the accounts due the company as soon as I have reached a determination as to them.

9 "Yours most truly,

"W. F. STEVENSON.

"Cc. to T. B. Felder, B. L. Abney and J. Fraser Lyon."

12. That in pursuance of the agreement and understanding so arrived at, and relying implicitly thereon, this plaintiff continued

to sell to, and ship to, certain of the said County Dispensaries goods needed for their purposes without ever having received any notice of any intimation from the said defendants, or any one else, that the understanding and agreement so reached would be terminated or violated, until on the 26th day of February 1910, there were due to this plaintiff the following sums from the following named County Dispensaries on account of goods so sold and shipped after the said 20th day of November 1909, to-wit:

From the County Dispensary for the County of Richland.	\$4,963.13
From the County Dispensary for the County of George-	
town	660.68
From the County Dispensary for the County of Aiken...	705.41
From the County Dispensary for the County of Beaufort.	26.70
Aggregating the sum of.....	\$6,355.92

which sums, except the sum due by the County Dispensary for the County of Aiken, are embraced in the balances due to this plaintiff as alleged in paragraph six of this complaint, this plaintiff having subsequently delivered the additional amounts of glass bottles, demijohns, etc. to the County Dispensaries alleged in paragraph six of this complaint.

10 13. That the said defendants, undertaking to proceed under section 6 of the Act entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved the 23rd day of February 1910, as this plaintiff is informed and believes, demanded from the County Dispensary Boards for the County of Clarendon, the County of Richland and the County of Georgetown, the sums of money alleged in paragraph six of this complaint, amounting in the aggregate to the sum of nineteen thousand and eighty-four and 38/100 dollars (\$19,084.38) then due to this plaintiff by said several County Dispensary Boards, as alleged in said paragraph six, and unlawfully and wrongfully received the said sums of money from said several County Dispensary Boards, claiming that they were entitled to the same on account of the above mentioned illegal offset found by said State Dispensary Commission to be due by this plaintiff as aforesaid; which action this plaintiff alleges was wholly without authority of law, as the provisions of said section 6 of the Act of February 23rd, 1910 were unconstitutional, null and void, as constituting an offort, unwarrantably and without authority, to confiscate the property of this plaintiff without due process of law, the provisions of said section being in violation of section 10 of Article I. of the Constitution of the United States, and also of the Fourteenth Amendment to the Constitution of the United States; and, furthermore, in violation of the express contract and agreement entered into by this plaintiff with the defendants above named as above alleged.

11 14. The said defendants have refused, and still refuse to pay over to this plaintiff the said several sums of money so wrongfully taken by them from said several County Dispensary Boards as aforesaid, and this plaintiff has not access to the books

of said several County Dispensary Boards and cannot allege the dates upon which the same were taken, but alleges that they were taken during the year 1910.

Wherefore, this plaintiff demands judgment against the said defendants, and each and every of them, for the said sum of nineteen thousand and eighty-four and 38/100 dollars (\$19,084.38), with interest on the several sums constituting said sum from the respective dates when they were received by said defendants, together with the costs of his action.

LYLES & LYLES,
JNO. T. SEIBELS,
D. W. ROBINSON,
Attorneys for Plaintiff.

Summons.

Filed Dec. 13, 1911.

The United States of America, District of South Carolina, in the Circuit Court, Fourth Circuit.

CAROLINA GLASS COMPANY, Plaintiff,

vs.

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Defendants.

To W. J. Murray, John McSween, A. M. Wood, Avery Patton and J. S. Brice, defendants in this action:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer on the subscribers at their 12 offices, 600-603 Nat. Loan & Exch. Bk. Bldg., Columbia, S. C., on or before Rule Day, occurring twenty days next after the service of this summons on you, exclusive of the day of service.

If you fail to answer this complaint within the time aforesaid, the plaintiff will apply to the Court for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Columbia, S. C., the fifth day of December, Anno Domini, one thousand nine hundred and eleven and in the 136th year of the sovereignty and independence of the United States of America.

LYLES & LYLES,
D. W. ROBINSON,
JOHN T. SEIBELS,
Plaintiff's Attorneys.

C. J. MURPHY,
[SEAL.] C. C. C. U. S., Dist. S. C.

Marshal's Return of Service.

The marshal's return of service shows that the defendants Dr. W. J. Murray, John McSween, Avery Patton and J. S. Brice, were served personally on the 14th and 18th days of December, 1911, with a copy of the summons and complaint, and on the defendant A. N. Wood by leaving same with his son-in-law, Thos. B. Butler, who resided in his dwelling in the Town of Gaffney, S. C.; the said A. N. Wood, being temporarily in the State of Minnesota, by handing to and leaving a true and correct copy thereof with him, the said Thos. B. Butler, Personally, on the 18th — December 1911.

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Joint and Several Answer of Defendants.

Filed February 5, 1912.

United States of America, District of South Carolina, in the District Court, Fourth Circuit.

CAROLINA GLASS COMPANY, Plaintiff,
against
W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and
J. S. BRICE, Defendants.

The defendants above named, jointly and severally answering the complaint herein, —

For a First Defense:

1. Admit the allegations contained in paragraphs one and two of the complaint.
2. Admit the allegations contained in paragraph three of the complaint, except so far as the same may be in conflict with the Act of the General Assembly therein referred to.
3. Admit the allegations contained in paragraph four of the complaint, except so far as the same may be in conflict with the terms and provisions of the Act therein referred to, and a proper construction thereof.
4. Admit the allegations contained in paragraph five of the complaint.
5. Admit the allegations contained in paragraphs eight and nine of the complaint.
- 14 6. Deny the allegations contained in paragraph ten of the complaint, so far as the same may be deemed allegations of fact, and deny the conclusions of law therein made.
7. Deny the allegations contained in paragraphs six, seven, eleven, twelve, thirteen and fourteen of the complaint, except as is herein specifically admitted to be true, and with regard to such allegations these defendants allege that said defendants, constituting the State Dispensary Commission, having been organized and proceeding under the Act approved the 24th day of February 1907, being the

same Act mentioned in the said complaint, the plaintiff filed with the State Dispensary Commission a statement of its claim of \$23,013.75, and presented the same for examination, determination and payment; that the said Commission went into an investigation and examination of said claim as between the said company and the State, and after careful examination and consideration of the evidence produced before it, both for and against the claim, did ascertain and determine that the said claim was invalid and untrue, and did, on the 17th day of November 1909, reject the same in an opinion and decision, an extract from which is set out in paragraph nine of the complaint, and further found, as therein appears, that by reason of the transactions therein stated the said Carolina Glass Company, the plaintiff herein, was, after deducting said claim from the amount of the overcharges, indebted to the State of South Carolina in the sum of \$28,419.24, but these defendants, as said Commission or as individuals, had no knowledge of the state of the accounts or transactions of the plaintiff with the County Dispensary Boards, nor did

they take any action with reference to the collection of what 15 had been ascertained and found to be due the State by said plaintiff on account of its transactions with such County Dispensary Boards, but these defendants have been informed and believe that, at the time the defendants, as said Commission, rendered their judgment in the case of the Carolina Glass Company, on the 17th of November 1909, the said company was due by the State, through the County Dispensary Boards, as follows:

Orangeburg County Dispensary Board.....	\$1,399.51
Abbeville County Dispensary Board.....	572.81
Kershaw County Dispensary Board.....	926.90
Richland County Dispensary Board.....	3,363.21
Fairfield County Dispensary Board.....	996.13
Bamberg County Dispensary Board.....	801.07
Colleton County Dispensary Board.....	470.38
Barnwell County Dispensary Board.....	323.19
Georgetown County Dispensary Board.....	44.51
Sumter County Dispensary Board.....	386.12
Laurens County Dispensary Board.....	1,039.84
Clarendon County Dispensary Board.....	96.47
 Total.....	 \$10,420.14

which said amounts these defendants are informed and advised should, in equity and good conscience, and as a proper and legal application thereof, be returned and applied as a credit to the amount due the State, although not sufficient to have fully discharged the amount due.

These defendants are further informed and believe that, at the time mentioned in the complaint, there were communications between the attorneys for the Glass Company and Mr. W. F. Stevenson, which resulted in the arrangement between the said parties contained in the said letter, which was to the effect that no interference would be made with money coming for shipments made

from the date of said letter until further notice, and that, with regard to the amounts then due the company, the attorneys would confer together and reach a determination as to what course should be pursued.

16 They are further informed and believe that the said Carolina Glass Company did, notwithstanding said agreement and in violation thereof, withdraw from Abbeville, Kershaw, Farefield, Bamberg, Colleton, Barnwell, Sumter and Laurens Counties, every dollar which the County Dispensary Boards of said counties owed to it, amounting to \$4,699.86, which these defendants aver was a violation of said agreement, the said Boards, on account of said agreement, not having been notified to refuse payment of said claims, and the State took no action to protect her interests therein.

That the General Assembly of the State of South Carolina passed an Act entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved February 23, 1910; that in and by said Act the State Dispensary Commission was given certain authority and power therein stated, in addition to the powers theretofore conferred upon it, that the State Dispensary Commission, after rendering its judgment on November 17, 1909, upon the claims and matters examined, investigated and heard, did, as stated above, take no action, as a body or individually, with regard to the enforcement of said finding and judgment, except as hereinabove stated, but that upon the approval of said Act, it became their duty to convene and to carry into effect the provisions and requirements of said Act, and that they did so convene on the 26th day of February 1910, and proceeded to the discharge of their duties under the last mentioned Act, as well as those heretofore mentioned and of force; that, in pursuance of such requirements of the Act, they did, upon due notice to the Carolina Glass Company, further examine into and

17 consider the transactions and dealings between the State Dispensary and the Carolina Glass Company, and upon such consideration and examination, were of opinion that the State had a just and legal claim against the said Company by reason of such dealings and transactions, of \$28,419.24, after the disallowance of the claim which had been presented to said Commission by said Carolina Glass Company, and theretofore rejected.

That these defendants, as said Commission, at the same time and acting under the provisions contained in the Act of 1910, did direct the County Dispensary Board of Richland County to withhold payment of any account of the said Carolina Glass Company out of the funds arising from the sales of whiskies, liquors, etc. and did, upon demand, receive from the County Dispensary Board of Richland County the sum of \$17,550.07, but these defendants, as a State commission, neither gave any order nor received any money from the County Dispensary Boards of Georgetown, Beaufort and Clarendon Counties, and they are informed and believe, that, after their removal from office in March 1911, the present State Dispensary Commission, their successors in office, received from the County Dispensary Boards of Georgetown and Beaufort Counties the sum of \$1,437.82.

Subsequent to the approval of the Act of the 23rd. of February 1910, to-wit, on February 26, 1910, there was only due, to the best information and belief that these defendants have, by the County Dispensary Boards, or the State through said Boards, to the Carolina Glass Company, the following:

Richland County Dispensary Board.....	\$4,963.13
Georgetown County Dispensary Board.....	660.68
Clarendon County Dispensary Board.....	96.47
Aiken County Dispensary Board.....	727.95
 Total.....	 \$6,448.23

being a deficit of the amounts due on the 20th. of November 1909, of \$3,971.91, the said Carolina Glass Company having, in violation of the agreement aforesaid, withdrawn said amount.

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That upon notice to the said Carolina Glass Company by the Commission under the Act of 1910 of their demand upon the County of Richland for the payment to them of the said sum of money, and of their intention to make demand upon other County Dispensary Boards, the plaintiff herein commenced an action in the original jurisdiction of the Supreme Court of South Carolina against these defendants and others, setting out the same cause or causes of action and complaint, and matters and things as in the complaint herein, and demanding judgment, among other things, that these defendants, and each and every one of them, be enjoined from in any manner demanding or receiving the said sums of money, or any of them, alleged to be due by the said several County Dispensary Boards above named to the plaintiff, and from in any manner interfering with the payment of such sums by the said County Dispensary Boards to the plaintiff, and for such other and further relief, etc.; that at the same time an appeal was taken from the judgment and order of the State Dispensary Commission disallowing the claim presented to it by the plaintiff, to said Supreme Court; that the said cases came on for a hearing before the said Supreme Court at the April term, 1910, and an opinion was rendered by said Court on November 29, 1910, to which reference is craved (87 S. C. 270.) and this court asked to take notice of the law therein declared and the constructions made of the statutes herein referred to. The judgment of that court was that the decision of the Commission upon the plaintiff's claim against the State was affirmed, and that, while these defendants were enjoined from asserting or claiming any lien upon plaintiff's property (real property, situate in Richland County) by virtue of the notice filed in the office of the Clerk of the Court

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of Common Please for Richland County, and that said notice be cancelled of record, the court determined all other questions in favour of these defendants and declared that the State Dispensary Commission was the sole arbiter of the rights of the plaintiff, if it has any, with regard to the matters in dispute between them.

That immediately thereafter these defendants, as the State Dispensary Commission, received from the County Dispensary Board

of Richland County, in pursuance of the notice it had theretofore made and did make upon it, \$17,550.07, being the amount at that time in the hands of said Board of moneys arising from the sale of whiskies, liquors, etc. which was, under the Act of 1910, subject to be paid over as funds of the State, to the State Dispensary Commission, to be held by it as applicable to the claim of the State against the said Carolina Glass Company.

Thereafter a petition for a rehearing was filed in both cases by the Carolina Glass Company, and was refused.

That this Commission, upon receipt of said moneys from the County Dispensary Boards, held the same until the 27th. day of March 1911, when they turned the same over to their successors in office as moneys belonging to, and received by them for and on behalf of, the State, and was accepted by their successors in office, the present State Dispensary Commission, as such, and, as they are informed and believe, is now held by them as such.

For a Second Defense.

These defendants allege that, on the 29th. day of November, 1910, in an action brought in the original jurisdiction of the Supreme Court of the State of South Carolina, wherein the plaintiff,

Carolina Glass Company, was plaintiff, and these defendants
20 were defendants for the same cause or causes of action alleged in the complaint herein, and the same rights, questions of law and fact were drawn in controversy and necessarily involved, the Supreme Court of said State determined and adjudged, on the merits thereof, each and every right, question of law and fact alleged and claimed in this complaint and herein involved, adversely to the plaintiff and in favour of these defendants, from which decision the plaintiff has not appealed, which said judgment these defendants submit is conclusive against the plaintiff as to the matters set up and claimed in the complaint herein.

For a Third Defense.

These defendants allege that they were officers of the State of South Carolina at the times mentioned in the complaint, and were acting as such; the County Dispensary Boards of the several counties mentioned in said complaint were officers of the State and acting as such in the performance and discharge of their duties at the times mentioned; that the moneys arising from the sale of intoxicating liquors, wines and beers were moneys in the custody of said County Dispensary Boards belonging to the State, upon which the plaintiff had no lien and had no title, control or possession, or on which there was impressed any trust in its favour as against the State; that each and every act done and taken by these defendants, in demanding and receiving from said County Dispensary Boards the moneys which they held arising from the sale of intoxicating liquors, wines and beers, and holding the same, was done in behalf of the State and by virtue of the powers of their office, and in accordance with the direc-

tions and provisions of the Acts of the General Assembly mentioned in the complaint, which acts these defendants aver to be valid and constitutional and not in conflict with any provision of the State or Federal Constitution, and that the retention by these defendants of said moneys, and the payment over of the same to their successors in office, was done in the performance of their duties as officers of and in behalf of the State, and in accord with the duties imposed upon them by statutes of the State creating the State Dispensary Commission and defining its powers and duties; that they had no individual interest, nor is it claimed by said complaint that they had, or have, in demanding and receiving said moneys or retaining the same, or in refusing to deliver the same to the plaintiff upon the demands claimed to have been made upon them; all of which acts these defendants allege to have been legal and binding and made as officers of the State under valid statutes of the State, the terms and provisions of which are construed and declared by the Supreme Court in an action brought by the plaintiff against these defendants, and adjudged and determined on the 29th of November 1910, adversely to the claims of the plaintiff. These defendants, therefore, aver that this is a suit or action in fact and in legal effect, against the State of South Carolina, and not against these defendants or either of them except as in their official capacity they represent said State, and therefore is contrary to the provisions of the Constitution of the United States, and this court has no jurisdiction to hear and determine the same.

Wherefore these defendants pray that the complaint herein be dismissed.

February 5, 1912.

J. FRASER LYON,
W. F. STEVENSON,
B. L. ABNEY, AND
WITHERSPOON & SPENCER,
Attorneys for Defendants.

22 *Notice of Motion to File Supplemental Answer.*

Filed June 9, 1912.

UNITED STATES OF AMERICA,
District of South Carolina:

In the District Court.

CAROLINA GLASS COMPANY, Plaintiff,
against
W. J. MURRAY and Others, Defendants.

To Messrs. Lyles, D. W. Robinson and J. T. Seibels, Attorneys for Plaintiff, Carolina Glass Company:

Please take notice that on the 4th day of June next, at 11 o'clock A. M., or as soon thereafter as counsel can be heard, the undersigned

will move the court to be allowed to make a supplemental answer in the above stated case. A copy of the proposed supplemental answer is hereto attached.

J. FRASER LYON,
B. L. ABNEY,
W. F. STEVENSON,
C. E. SPENCER

D'f'd's' Att'ys.

COLUMBIA, S. C., May 30th, 1912.

No objection being made to the filing of this supplemental answer, it is

Ordered, that defendants have leave to file the same.

HENRY A. M. SMITH,
U. S. Judge for S. C.

June 9, 1912.

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Supplemental Answer.

Filed June 10, 1912.

UNITED STATES OF AMERICA,
District of South Carolina:

In the District Court.

CAROLINA GLASS COMPANY, Plaintiff,
against
W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and
J. S. BRICE, Defendants.

Supplemental Answer.

The defendants above named, by leave of the court first had and obtained, make this their supplemental answer to the complaint of the plaintiff herein, and alegge:

I. That since the commencement of the above entitled action and the filing of the complaint herein, and since the filing of the answer of these defendants therein, the Governor of the State of South Carolina has transmitted the report of the State Dispensary Commission, made to him in accordance with the provisions of law, to the General Assembly of the State of South Carolina, then in session, wherein said Dispensary Commission reported that it held in its hands, belonging to the State and which it had received from the former State Dispensary Commission (these defendants) the sum of \$28,737.95, which included the \$17,550.07 received by this Commission from the County Dispensary Boards and claimed by the plaintiff the Carolina Glass Company.

II. That the attention of the General Assembly of the State of South Carolina, being drawn to the facts and circumstances under which said moneys were collected by the said State

Dispensary Commission from the County Dispensary Boards, upon consideration of the same passed a joint resolution entitled "A Joint Resolution to conclude the winding up of the affairs of the State Dispensary," which said joint resolution became effective, in accordance with the terms and provisions of the Constitution, without the approval of the Governor, wherein, by section two of said joint resolution, it was resolved:

That the members of the said State Dispensary Commission do make their final report of all their acts and doings to the Governor and to the General Assembly within thirty days after the passage of this resolution, and that they turn into the State treasury all moneys in their hands arising from the winding up of the affairs of the late State Dispensary, etc.

And that, in pursuance of the provisions of said joint resolution, the State Dispensary Commission did, on the 21st day of March, 1912, turn over to the State Treasurer \$25,587.01, being the amount they had received from the former State Dispensary Commission, these defendants, less the expenses of the said Commission, and wherein was included the said sum of money collected by these defendants, as the State Dispensary Commission, from the County Dispensary Boards, and mentioned in paragraph seven of their first defense of the original answer; and they are advised that the said amount of money is now held in the treasury of the State of South

Carolina.

25 III. That in and by section four of said joint resolution the Attorney General was directed to take charge of the defense of this suit, instituted by the Carolina Glass Company against W. J. Murray, John McSween, Avery Patton, A. N. Wood and J. S. Brice. For other and further matters contained in said joint resolution, reference is made to it as a part of this supplemental answer.

J. FRASER LYON,
B. L. ABNEY,
W. F. STEVENSON,
C. E. SPENCER,
Attorneys for Defendants.

May 30th, 1912.

STATE OF SOUTH CAROLINA,
County of Richmond:

W. J. Murray, being duly sworn, says that he is one of the defendants in the above entitled action; that he has read the supplemental answer herein, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to them he believes it to be true.

W. J. MURRAY.

Subscribed and sworn to before me this May 30, 1912.

G. C. DISMUKES, [L. S.]
Notary Public for South Carolina.

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Trial for Cause.

At a stated term of the District Court, begun and held at Charleston, S. C. in the district aforesaid, on the 10th day of June 1912, this case came up for trial before the court, counsel having by stipulation waived a trial by jury. The pleadings were read to the court, and an agreed statement as to what is introduced by each side was taken down by the stenographer.

Arguments were made by Mr. Wm. H. Lyles, Mr. Robinson and Mr. J. B. S. Lyles on behalf of plaintiff, and by Mr. Stevenson, Mr. Abney and Mr. Spencer on behalf of the defendants, and by Mr. Lyles and Mr. Robinson in reply on behalf of the plaintiffs.

The court took the case under advisement.

And thereafter, to wit: On the 17th day of June, 1912, the court entered its opinion and order dismissing the complaint, and which are both set out in full in the bill of exceptions.

Bill of Exceptions.

Filed November 27th, 1912.

UNITED STATES OF AMERICA,
Eastern District of South Carolina:

In the District Court.

CAROLINA GLASS COMPANY, Plaintiff,
vs.

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and
J. S. BRICE, Defendants.

Be it remembered that afterwards, to wit, on the tenth day of June, in the year of our Lord 1912, at a stated term of said court begun and holden at Charleston, in and for the Eastern District of South Carolina, before his Honor Henry A. M. Smith, 27 District Judge, the issues joined in the above stated case between the parties upon the pleadings, came on to be tried before the said judge without the intervention of a jury, the parties aforesaid, by their counsel having, according to the statute in such cases made and provided, waived a jury; plaintiff being represented by D. W. Robinson, Esq., Wm. H. Lyles, Esq., and J. B. S. Lyles, Esq., and the defendants by Hon. J. Fraser Lyon, B. L. Abney, Esq., W. F. Stevenson, Esq., and C. E. Epencer, Esq.

And upon the trial of that issue the defendants presented the following demurrer:

Notice of Grounds of Oral Demurrer.

To Messrs. Lyles & Lyles, D. W. Robinson and John T. Seibels,
Attorneys for Plaintiff, Carolina Glass Company:

Please take notice that the defendants, upon the call of this case for trial, will take the objection that the complaint herein does not state facts sufficient to constitute a cause of action. The grounds of such objection will be as follows:

1. It appears from the face of the complaint that the plaintiff has no legal title to or legal interest in the moneys received by defendants from the County Dispensary Boards mentioned therein, and therefore cannot maintain an action at law therefor, and this is a legal action. Whatever interest, if any at all, plaintiff may have, is equitable.

28 II. It appears from the face of the complaint that the moneys held by the County Dispensary Boards arose from the sale of whiskey, etc., and not from the goods purchased from the plaintiff, and that such moneys arising therefrom were moneys belonging to the State of South Carolina and not to the plaintiff, and hence no action can be maintained against these defendants by reason of or on account of their receiving as the State Dispensary Commission, the same from said Boards.

III. It appears from the face of the complaint, and the decision of the Supreme Court of the State of South Carolina, of which this court will take judicial cognizance, that the plaintiff is concluded by the judgment of the Supreme Court of the State of South Carolina in the case of Carolina Glass Company against W. J. Murray and others, reported in 87 South Carolina Reports, page 270, and hence the complaint shows no cause of action in favour of the plaintiff against the defendants.

IV. It appears from the face of the complaint that this is an action against the State to collect an alleged debt, and hence the complaint does not state any cause of action of which this court has jurisdiction.

May 30th, 1912.

B. L. ABNEY,
W. F. STEVENSON,
C. E. SPENCER,
Attorneys for Defendants.

But the Court stated it would hear the whole case before determining the demurrer, and would decide all the issues at one and the same time, and thereupon the attorneys for plaintiff to maintain and prove the said issue on their part offered and put in certain testimony, and upon the close of the plaintiff's testimony the attorneys for the defendants to maintain and prove the issue on their part offered and put in evidence certain testimony.

29 After hearing all the testimony the court rendered its judgment embodying its conclusions of law and fact upon the whole case as follows:

Opinion.

Filed June 19, 1912.

This is an action at law, but the result depending upon questions of law, the parties to the cause have by written stipulation duly signed and filed, waived a jury trial, and the question therefore comes before the Court without a jury for trial and determination. The complaint is in the nature of an action against the individual defendants for moneys by them had and received, and which moneys they ought ex aequo et bono to refund to the plaintiff as its property. The defendants were at one time members of the State Dispensary Commission, appointed under the Act approved 16 of February, 1907 (Stats. S. C., Vol. XXV, p. 855), and as such received a sum of money under the following circumstances, as appears by the testimony in the cause, *viz.*:

By an Act approved 16 February 1907 (Stats. S. C. Vol. XXV, p. 463), the General Assembly of South Carolina enacted that wherever at the election in the Act provided for any county voted in favour of the sale of alcoholic liquors and beverages it should be lawful that the same should be sold in such county; and that thereupon a Board should be appointed to be known as the "County Dispensary Board," who were authorized and required to establish Dispensaries in the county for the sale of alcoholic liquors and beverages under the forms and limitations prescribed in the Act. The Act also provided:

"SEC. 6. The members of the said County Dispensary Board 30 are hereby declared to be County Officers and are hereby authorized and empowered under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: Provided That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made."

"SEC. 11. Each Dispenser shall daily deposit to the credit of the County Board, in a Bank designated by the Board all moneys received by him from sales."

"SEC. 13. All sales shall be for cash and at a profit to be determined by the Board."

By Sec. 18, it is provided that the County Dispensary Board should quarterly in each year make a sworn statement of the profits and at the same time divide and pay out the profits as so ascertained in the proportion fixed by the Act to various public county purposes.

The Act appointing a State Dispensary Commission although a separate Act was approved on the same day as this last mentioned Act providing for County Dispensary Boards, *viz.*, 16 of February 1907. Under the Act of 16 of February 1907, creating the State Dispensary Commission the Commission so created was directed to close out the entire business of the State Dispensary as carried on by the State prior to 16 of February, 1907, collect all debts due, and pay all just

abilities of the State growing out — the said business. The Commission was given full power and authority to investigate the past conduct of the affairs of the Dispensary. This Act of 1907 was amended in 1908 so as to give the Commission full power to pass upon, fix and determine all claims against the State growing out of 31 dealings with the Dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it and no other (Stats. S. C., Vol. XXV. p. 1293.)

The plaintiff in this case had furnished the State with bottles and demijohns used in the business of the State Dispensary as carried on prior to 16 February, 1907, and had a claim therefor against the State for \$23,013.75. This claim the plaintiff presented to the State Dispensary Commission, who after investigation found that in pursuance of a conspiracy between some of the directors of the State Dispensary and some of the plaintiff's officers or agents to defraud the State the latter had paid the plaintiff on glassware purchased between 1902 and April 1906, a price exceeding the fair market value thereof by \$51,432.94. Therefore allowing plaintiff's claim of \$23,013.75 the Commission found that plaintiff was indebted to the State in the sum of \$28,419.24, the difference between the amount of its claims and the sum it had fraudulently collected from the State prior to April 1906.

From this decision of the Commission an appeal was taken under the provisions of the Act of 1907 to the Supreme Court of South Carolina. This appeal was heard by that court, which on 17th November 1910, rendered its decision held that the plaintiff had no claim against the State. That Court held further:

"The findings of the Commission, however, are controlling only in its determination of the non-liability of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper court to recover the amount found by the Commission to be due it by appellant."

32 And again: "So long, therefore, as the action of the Commission was confined to the investigation of all dealings, past and present, with the Dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the Constitution for the Legislature to provide by law how claims of the State against others shall be established or adjusted except through the courts. We conclude, therefore, that in so far as the Act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff it is unconstitutional, null and void." Carolina Glass Co. v. State of S. C., 87 S. C. 270.

In the meantime, and after the creation of the County Dispensary Board under the Act of 16 of February 1907, the plaintiff from time to time furnished the County Dispensary Board for Richland County glassware under purchases made from it by that Board, and on 23 of February 1910, there was admittedly due to the plaintiff

for these purchases the sum of \$4,963.13. On the 23 of February 1910 (Stats. S. C. Vol. XIV, p. 876) by an Act of the General Assembly of South Carolina, approved that day it was provided:

"SEC. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing, and all Boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all County Dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State." Subsequent to 23rd February 1910, and between that date and 13th December 1910, the plaintiff delivered to the County Dispensary Board for Richland County additional supplies of glassware for which there was admittedly due to plaintiff \$12,586.64, which added to the \$4,963.13, due on 23rd of February 1910 made a total of \$17,550.07 admittedly due to plaintiff on December 13, 1910.

On that day, viz., 13 of December 1910, the County Dispensary Board for Richland County paid the sum of \$17,550.07 to the State Dispensary Commission under the circumstances stated in the receipt given for the same, viz.:

"COLUMBIA, S. C., December 13th, 1910.

"Received from the Richland County Dispensary Board the sum of Seventeen thousand five hundred and fifty 07/100 dollars (\$17,550.07). Being the amount in the hands of the Richland County Dispensary Board to the credit of the Carolina Glass Company for goods and merchandise bought by the Richland County Dispensary Board from the Carolina Glass Company, which amount is paid to the State Dispensary Commission upon its demand made in pursuance of the provisions of the Act of the General Assembly entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved 23 day of February 1910, and in pursuance of the judgment of the Supreme Court in the case of the Carolina Glass Company vs. Dr. W. J. Murray et al.

"STATE DISPENSARY COMMISSION,
"By W. J. MURRAY, *Chairman.*

\$17,550.07."

34 On 22 of November 1910 (after the filing of the opinion of the Supreme Court of South Carolina in Glass Co. v. State of S. C.), the plaintiff in this case gave the defendants personally notice that they would be held personally liable for any funds due to plaintiff by any County Dispensary Board which the defendants should hold and not pay over to the plaintiff.

On receiving this amount of \$17,550.07 the defendants held it until 27 of March 1911, when they turned it over to the persons who had been appointed as members of the State Dispensary Commission in succession to the present defendants who had ceased to be such.

The contention of plaintiff is that this amount of \$17,550.07 was a fund to which plaintiff is and was entitled, that it came into the hands of the defendants on 13 of December, 1910, under circumstances which fully notified the defendants that *ex aequo et bono* they were bound to pay it to plaintiff and that the action of defendants in turning it over on 27 of March 1911, to their successors in office was tortious and unlawful after the notice of 22 of November 1910, and leaves defendants personally responsible for the amount.

The jurisdiction of this Court is invoked on the ground that the Act of 23 of February 1910 is in contravention of section 10, Art I. of the United States Constitution as impairing the obligation of the contract whereby under the Act of 16 of February 1907 the County Dispensary Board was bound to pay to plaintiff the amount admittedly due for the glassware furnished by it, and is further in contravention of the XIVth. amendment to the United States Constitution in that it seeks without due process of law to take the amount of \$17,550.07 admittedly due to plaintiff and arbitrarily apply it to the payment of a contested claim made by the State, not yet judicially established, for \$28,419.24 against the plaintiff.

35 The defendants object to the jurisdiction of this court on the ground that this action is in effect an action against the State, or to which the State is a necessary party, and plead in bar to the merits that the cause of action set up in the complaint is *res adjudicata*, having been already adjudicated by the State courts in the cause of Carolina Glass Co. v. State of So. Ca., the decision of the court in which this case is reported in 87 S. C. p. 270.

On this last question the judgment of this court is that the matter is not *res adjudicata*. By the express terms of the decision referred to the merits of the contention of plaintiff in any affirmative proceeding in any court of competent jurisdiction for a recovery is not passed upon or adjudged. Neither the parties nor the controversy in the case before this court are the same with those in the case before the State Dispensary Commission and the State Supreme Court.

If the facts were as they are presupposed to be by the plaintiff in its pleading this court would find no difficulty in holding as a conclusion of law that so much of the Act of 23 of February, 1910, as may seek by force of the Act itself to divest the plaintiff summarily of any vested right or title acquired by virtue of the Act of 16 of February 1907, or as may seek to take summarily any property belonging to plaintiff and apply it to the State's use, is null and void.

In other words, if the said amount of \$17,550.07 was a fund belonging to the plaintiff—was its property, to which it had 36 title—then the Act of 23 of February 1910, in so far as it attempted to summarily take that fund and give it to the State without proper judicial process was and is null and void under the provisions of the United States Constitution above mentioned.

If, however, the said amount of \$17,550.07 was not a fund to which the plaintiff had such title as to be able to recover it in the proceedings now before this court, but if it was and is the property

of the State of South Carolina, then the statute would not be subject to the prohibitive clauses of the United States Constitution.

Without discussing the principles which govern the right of action in a case for money had and received to the use of another, it is enough to say that in all such cases the plaintiff must establish his title to the particular fund in question as distinguished from a mere claim as a creditor of the person to whom the fund belongs. To illustrate: If A. is a creditor of B. and C. has in his possession funds of B. that would not justify an action by A. against C. for money had and received. A. would have the right only to bring an action against B. to recover his debt and as an incident to that action (if the other circumstances permitted) attach the funds in the hands of C. to answer to the judgment when established. B., however, would be a necessary party to this action.

But if B. had made an assignment to A. of the particular funds in the hands of C. whether before or after it reached his hands, an action for money had and received would lie directly against C.

It is thus evident that upon the question of the plaintiff's title to, interest in or lien upon the particular fund received by the defendants, all other questions in this cause depend:

37 1. The plaintiff cannot recover in an action for money had and received unless it possesses some title to, interest in or lien upon the particular fund in the hands of the third party against whom the action is brought.

2. Unless the plaintiff under the Act of 1907 or otherwise had such an interest in, lien upon or title to the specific fund of \$17,550.07 as to give it a definite vested right to it, then Sect. 6 of the Act of 1910 could not operate to divest any such right in contravention of the clauses of the United States Constitution set up in the complaint.

3. If this fund of \$17,550.07 belonged to the State of South Carolina and the plaintiff was only a creditor of the State of South Carolina and possessed no interest in, lien upon or title to this specific fund then the State of South Carolina would be a necessary party to any judicial proceedings attempting to establish a judgment against the State and by virtue of such judgment when established to subject this fund as the property of the State to the payment of such judgment.

Under the second of these questions a different controversy exists with regard to the \$4,963.13 due on the 23 of February 1910, than with regard to the \$12,586.64 which became due for articles furnished subsequent to that date and furnished therefore with full knowledge and notice of the Act of 23 of February 1910, now complained of as contravening the prohibitive clauses of the United States Constitution. That statute could only contravene those provisions as to contracts made and rights existing prior to its passage.

38 The contracts for the sale of the articles represented in the claim for \$12,586.64 having been entered into and all rights thereunder having accrued subsequent to the passage of the Act could not have been by it divested or impaired or taken without due process of law.

As, however, if the plaintiff is not entitled to maintain this action for the \$4,963.13 a fortiori it must fail as to the \$12,586.64, it will not be necessary to discuss them separately in this opinion.

To whom did the fund of \$17,550.07 belong both before and after it reached the hands of defendants? Under Sect. 6 of the Act of 1907 County Dispensary Boards are "authorized and empowered under the authority and in the name of this State to buy in any market and retail within the State liquors and beverages as provided herein." If this were all there would be no doubt that the County Dispensary Board was simply the agent of the State to do as commanded. If the liquors and beverages were purchased under the authority and in the name of the State, then the State was the purchaser and the owner of the articles when purchased. Necessarily it follows from this that if the State was the purchaser the State was the party liable on the contract to the vendor for the purchase price. Necessarily it also follows that if the State was the purchaser and the owner of the articles when purchased it was also the owner of the proceeds of the same articles when sold by its direction.

It is true that in the first two lines of this section the members of the County Dispensary Board are declared to be "County Officers." There is no reason, however, why the State should not operate, if it sees fit, through or by means of local County Officers who owe

39 the existence of their office to a State Statute, as well as by means of general State Officers. It might be a question if the officers chose to make it, whether as a County Officer, the performance of a general State duty would be devolved upon him, but if the act performed was one in the name and under the authority of the State, the State would still be the responsible party, notwithstanding it might have been performed by an officer who could not have been compelled to perform it.

So, the proviso following the clause above quoted is: "that the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made." The very language of this clause would show that it was intended that the State should be liable upon any contract up to the extent of the actual assets of the County Dispensary for which the purchase was made. If the State was liable then it meant that the State was the vendee, and as such the owner of the property purchased. That the liability of the State was limited would not appear to affect this logical sequence. That limitation would appear simply to be notice to any one selling to the County Dispensary on the credit of the State that it must be careful not to sell to that particular County Dispensary Board any articles which exceeded in the cost price the actual assets in the hands of that particular County Dispensary Board. It would not, however, affect the express provision that if it did sell, it sold to them under the authority and in the name of the State, in other words, sold to the State the articles sold. This inference is corroborated by the provisions of Sect. 18., providing for the division of the profits in each county of the business of the sale of alcoholic liquors and beverages, as carried on under the Statute by the County Dispensary Board. Those

profits are arbitrarily divided differently in different counties. In some one-third goes to the municipality in which the Dispensary may be located; in another one-half goes to such municipality; in some counties one-third goes to the County School fund; in other counties only one-fifth goes to that fund. This evidences that the State retained to herself the entire control of the profits to be distributed as it saw fit, as its own money and with the power at any time by statute to repeal any existing mandate for the division of these profits, and make another and wholly different distribution.

It is claimed that inasmuch as the statute only undertakes to deal directly with the distribution of the profits of the business, the inference is that the balance was devoted by the State to the payment of the expenses of that business and incidentally as part of those expenses to the payment of the persons from whom the articles necessary for the business were purchased. It is contended that this constitutes such balance a sort of trust fund to be held by the County Dispensary Board for those specific parties, thus constituting the persons who might be the holders of that indebtedness, which must be deducted before the profits are ascertained, beneficiaries directly interested in this fund as a trust fund. This result would be a very strained inference under the circumstances. The direction that the profits must be ascertained and distributed may be a direction by the State to its agents to pay the expenses of the business before ascertaining and distributing the profits, but it is no more a segregation to the creditors individually of any part of the funds to pay

41 the expenses than is the act of any prudent business man who pays the expenses of his business before he spends his profits. The State could at any time interfere and direct that these expenses should not be paid until vouch'd or audited as the State saw fit, or in fact, it might expressly prohibit their payment until directed by an Act of the Legislature, or if — chose to go that length might wholly forbid the payment. The method adopted by the State for the payment of the expenses of the business authorized by it in no sense can be fairly construed as constituting the proceeds of the State's own property which could be used by it for the payment of those or any other expenses, a trust fund to which the parties to whom the expenses should be paid are entitled to look to as a specific fund assigned to them of which they are the beneficiaries.

The provisions of Sections 11 and 13 of the Act of 1907 lend no additional strength to the argument in favour of the inference sought to be drawn by the plaintiff. Those sections prescribe the methods to be followed by the State's agents in the control of the State's business so as to secure its efficient and safe performance. In considering this very section 6 of the Act of 1907 the Supreme Court of South Carolina held that the County Dispensaries were conducted under the authority and in the name of the State. "Therefore the officers in charge of them are agents of the State and the funds arising from the sale of liquors through them are the funds of the State and the debts due for goods sold them are the debts of the State." (Glass Co. v. State, 87 S. C. 288.)

In the same case the State court affirmed the conclusion
42 of that court in the case of State v. Dispensary Commission,
79 S. C. 325, viz., "The General Assembly may require the
public funds or any part of them to be put in any place or with
any person it sees fit; and there is no limit to its power in imposing
conditions and conferring discretion on its fiscal agent for the dis-
bursements of these funds to its creditors." In the same case
(State v. The Dispensary Commission, 79 S. C. 326), the Supreme
Court quoted and followed the Supreme Court of the United States
in the case of Buchanan v. Alexander, 4 Howard, 20, to the effect
that "so long as money remains in the hands of a disbursing officer,
it is as much the money of the United States as if it had not been
drawn from the Treasury." Under the construction of the statute
of 1907, as decided in the case of Glass Co. v. State, 87 S. C. 270,
and the principle decided in State v. The Dispensary Commission,
79 S. C. 316, the Supreme Court of the State of South Carolina has
decided that the proceeds of the articles purchased by the County
Dispensary Board under the authority given in the Act of 1907 was
the property of the State. That being the case it follows that it is
not the property of the plaintiff in this case, and plaintiff has no
enforceable interest in it, and that this action is an attempt on the
part of the plaintiff to subject this fund which is the property of
the State to the payment of the claim it holds against the State. To
that proceeding the State is a necessary party. Inasmuch as the
State has not consented to allow itself to be sued this Court has
no jurisdiction of any action against it, and can have no jurisdiction
of the action of the plaintiff in this case against the
State. In the case of Murray v. Wilson Distilling Co., 213 U. S.
151, the Supreme Court of the United States decided that it
43 was apparent that the purchases which were made by the
State's officers or agents of liquors for consumption in South
Carolina under the Dispensary Acts prior to the Act of 1907, were
purchases made by the State for its account, and therefore that the
relation of debtor and creditor arose from such transactions between
the State and the persons who sold the liquor. It further held that
the proceeds of such liquors when sold by the State's officers or
agents belonged to the State, and that suits by the vendors against
the parties in whose hands those State funds were, so as to compel the
application to the debts claimed by the vendors, of the proceeds of
the liquors in the hands of such parties, were in effect suits against
the State, and that as such came within the express prohibition of
the XIth Amendment to the Constitution of the United States, and
that this Court could have no jurisdiction of them. The Supreme
Court of the United States held further in the same case that by
engaging in a business the State does not thereby lose the exemption
from suit given to it under the XIth Amendment to the United
States Constitution. It follows that upon the facts found in this
case under the principles adjudged by the Supreme Court of South
Carolina in the two cases cited, and by the Supreme Court of the
United States in Murray v. Wilson Distilling Co., supra, that this
court has no jurisdiction of this cause as being in effect a suit

against the State or one to which the State is a necessary party, and that the demurrer interposed by the defendants to the jurisdiction of the court must be sustained. Although it would appear to follow also from the principles adjudicated in the decisions referred to that the plaintiff had no such interest in the fund received by the defendants as would entitle it to recover in this action against the defendants individually as for money had and received, and 44 that having no such interest section 6 of the Acts of 1910 divested no right of nor impaired any contract held by the plaintiff so as to contravene the provisions of the United States Constitution, yet as the court finds that for the reasons stated it has no jurisdiction of the cause as being one in effect against the State, this adjudication is limited to one of dismissal on that ground, and a formal judgment to that effect will be entered.

19 June 1912.

HENRY A. M. SMITH,
U. S. Judge for S. C.

Order Dismissing Complaint.

Filed June 19, 1912.

This cause having duly come on to trial, and having been tried upon the pleadings and testimony, and counsel for all parties having been heard, it is now in pursuance of the opinion in this cause this day filed:

Adjudged That the complaint herein be dismissed.

19 June 1912.

HENRY A. M. SMITH,
U. S. Judge for S. C.

To which rulings of law the plaintiffs thereupon duly entered the following exceptions, to wit:

1. That the court erred in holding that it had no jurisdiction of this cause as being one in effect against the State, whereas the court should have held that the suit is one brought against the defendants, who claiming to act as officers of the State and under colour of an unconstitutional statute, committed acts of wrong and injury to the rights and property of the plaintiff acquired under contract with the State, and is to recover money from such defendants 45 unlawfully taken by them from the plaintiff in behalf of the State or for compensation in damages, and therefore is not a suit against the State or one to which the State is a necessary party.

2. That the Court should have ruled as a matter of law that upon the undisputed facts the fund of \$4,963.13 held by the Richland County Dispensary Board for plaintiff on February 23, 1910, as well as the additional fund of \$12,586.64, or the total fund of \$17,550.07 held by the said Richland County Dispensary Board for plaintiff on December 13, 1910, was a fund to which the plaintiff was and is entitled, and that it came into the hands of defendants

on 13 day of December, 1910, under circumstances which fully notified the defendants that *ex aequo et bono* they were bound to pay it over to the plaintiff, and that the action of the defendants in taking the said funds on December 13, 1910, and in turning said funds over to their successors in office on the 22 March was tortious and unlawful, after the notice given defendants by plaintiffs on November 22, 1910, and in violation of the rights secured to the plaintiff by section 10 of Article I and the 14th Amendment of the United States Constitution, and leaves the defendants personally liable to plaintiff for the amount.

3. That the court erred in not ruling as a matter of law that upon the undisputed facts the letter of W. F. Stevenson to Mr. William H. Lyles, attorney, dated November 20, 1909, and set forth in paragraph eleven of the complaint, was a contract binding upon the State Dispensary Commission, and also upon the State of South Carolina, its agents and servants, in which the plaintiff was protected by section 10 of Article I, and the 14th Amendment of the 46 Constitution of the United States against the subsequent action of defendants purporting to act as the State Dispensary Commission in violation thereof.

4. That the court erred in not ruling as a matter of law that the dealings between the plaintiff and the Richland County Dispensary Board under the Act of 1907 created a contract between the State of South Carolina and the plaintiff binding upon the said State of South Carolina, its agents and servants, as well as upon the said Richland County Dispensary Board, and under which the plaintiff had the remedy to secure performance thereof by a writ of mandamus directed to the said Richland County Dispensary Board, or other appropriate remedy, and in which the plaintiff was protected by section 10 of Article I, and the 14th Amendment to the Constitution of the United States, and that therefore the plaintiff was entitled to recover even though it had no such interest in, lien upon or title to the specific fund of \$17,550.07 as to give it a definite vested interest therein.

5. That the Court erred in ruling as a matter of law that the fund of \$17,550.07, including the fund of \$4,963.13, due February 23, 1910, and the fund of \$12,586.64, due on the 13 December 1910, was the property of the State of South Carolina at all times, and that the plaintiff was only a creditor of the State of South Carolina, and possessed no such interest in, lien upon or title to this specific fund, either before or after February 23, 1910, as to give the plaintiff any right in or to this fund or any part thereof, which was protected by the Constitution of the United States, plaintiff at all times being merely a creditor of the State of South Carolina as to this money; that therefore the act of the defendants in 47 taking this money on December 13, 1910, and subsequently in disposing of the same, claiming to act as State Dispensary Commission, and so as agents of the State of South Carolina by virtue of the authority conferred upon them by section 6 of the Act of 1910, did not infringe any rights of the said plaintiff in or

to said money, or any portion thereof in violation of any provisions of the Constitution of the United States.

6. That the Court should have ruled as a matter of law that by virtue of the dealing between plaintiff and the Richland County Dispensary Board of the State of South Carolina prior and subsequent to February 3, 1910, a contract was created by and between plaintiff and the Richland County Dispensary Board, as well as between the plaintiff and the State of South Carolina, which said contract was binding upon said Richland County Dispensary Board as well as upon the State of South Carolina and its agents and servants, and the rights of plaintiff in which were protected by section 10 of Article I, and the 14th Amendment of the Constitution of the United States, and that under such contract the plaintiff had a remedy at law on mandamus addressed to the Richland County Dispensary Board, or by other appropriate remedy to secure the payment of the said sum of money, and that the Act of 1910 as well as the acts of the defendant done in pursuance thereto were an infringement on the rights of the plaintiff, and so in violation of section 10 of Article I. and the 14th Amendment to the Constitution of the United States.

7. That the court erred in ruling as a matter of law that this suit is in effect a suit against the State of South Carolina, and to which the said State is a necessary part and so is within the expressed prohibition of the 11th Amendment of the Constitution of the United States, whereas the court should have ruled that the

48 suit is one brought by plaintiff to recover money illegally confiscated and redress grievances illegally inflicted by the individual defendants claiming to act as the State Dispensary Commission by virtue of authority given them by section 6 of the Act of 1910, when the said Act is and always has been null and void because in violation of section 10 of Article I. and the 14th Amendment of the Constitution of the United States and therefore affording no protection or colour for the illegal acts of the defendants. Whereupon the counsel for the plaintiff did then and there propose the aforesaid challenges and exceptions to the rulings of the said court and prayed that their bill of exceptions might be signed and sealed, and it is signed and sealed accordingly this 16 day of November 1912.

The time for settling same having by due orders heretofore made been extended to this date.

HENRY A. M. SMITH,
U. S. Judge for S. C.

49

Petition for Writ of Error.

Filed 23 May, 1914.

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of South Carolina.

CAROLINA GLASS COMPANY, Plaintiff,
vs.W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and
J. S. BRICE, Defendants.

Considering itself aggrieved by the judgment of the District Court of the United States for the Eastern District of South Carolina, dismissing its Complaint, which order or judgment was filed and entered on June 19, 1912, the plaintiff hereby prays a writ of error from said order and judgment, to the Supreme Court of the United States.

Your petitioner would further represent that heretofore, to wit, on December 7th, 1912, it filed its petition for a writ of error from the same order and judgment to the United States Circuit Court of Appeals for the Fourth Circuit, which writ of error was allowed and issued on said date, and citation was issued thereon, and the record and proceedings in said cause carried to the said United States Circuit Court of Appeals for the Fourth Circuit, which by its judgment filed on July 10th, 1913, affirmed the judgment of the said District Court of the United States for the Eastern District of South Carolina.

50 That your petitioner at the time of carrying the said case to the United States Circuit Court of Appeals was of opinion that this was the proper method of carrying same to the Supreme Court of the United States for final decision, it being always petitioner's intention and purpose to seek such final review by said Supreme Court of the adverse judgment of said District Court, in the event that such was necessary. But your petitioner is now advised that it was mistaken in its assumption that said Circuit Court of Appeals had jurisdiction over said judgment on such writ of error to said District Court and that, on the contrary, said Circuit Court of Appeals was absolutely without jurisdiction, and its judgment rendered thereon was a nullity, because said case is controlled by Section 5 of the Judiciary Act of March 3rd, 1891, now appearing as Section 238 of the Judicial Code, approved March 3rd, 1911, and by reason thereof, the jurisdiction on a writ of error to said District Court was vested exclusively in the Supreme Court of the United States.

And your petitioner is further advised that the time has not expired within which it is entitled as of right to a writ of error from the Supreme Court of the United States to said District Court to reverse said judgment. And it, therefore, prays that such writ of

error be allowed and an order passed fixing the amount of a costs bond. Assignment of errors herewith.

WM. H. LYLES,
D. W. ROBINSON,
LYLES & LYLES,

Attorneys for Plaintiff.

Order Allowing Writ of Error.

Filed May 29, 1914.

In the District Court of the United States for the Eastern District of South Carolina.

CAROLINA GLASS COMPANY, Plaintiff,

vs.

W. J. MURRAY and Others, Defendants.

On hearing the petition for writ of error herein filed 23 May 1914, and it appearing that a writ of error has already been allowed from the judgment in this case to the Circuit Court of Appeals of the United States for the Fourth Circuit, which Court upon the hearing of the said writ of error affirmed the judgment below, and it further appearing from the said petition that in the opinion of counsel filing the said petition, that desiring to take a writ of error to the said Circuit Court of Appeals from the Supreme Court of the United States they are under the conviction that such writ would not lie because the judgment of the said Circuit Court of Appeals affirming the judgment of this Court was a nullity inasmuch as the said Circuit Court of Appeals was absolutely without jurisdiction, the said writ of error from the judgment in this Court, having been improperly taken to the said Circuit Court of Appeals, whereas it should have been taken to the United States Supreme Court, and it appearing further by said petition that the petitioners desire to have the former judgment made in this Court in this cause reviewed by the Supreme Court of the United States by a writ of error to this Court from that Court, and desire for that purpose to take out a new writ of error to this Court from the Supreme Court of the United States so as to put it beyond peradventure that they may be able to have the said judgment made by this Court reviewed by the Supreme Court of

52 the United States without any question on the ground of the inability of the Supreme Court of the United States to review said judgment by the way of a writ to the Circuit Court of Appeals in lieu of a writ of error direct to this Court, it is thereupon:

Ordered That the writ of error do issue upon the execution of a bond by the petitioner the Carolina Glass Company, in the usual form of a bond for costs on appeal without a supersedeas, in the sum of two hundred and fifty (\$250.00) dollars.

HENRY A. M. SMITH,

U. S. Judge for S. C.

29 May, 1914.

Assignment of Errors.

Filed May 23, 1914.

UNITED STATES OF AMERICA,
Eastern District of South Carolina:

In the District Court.

CAROLINA GLASS COMPANY, Plaintiff,

vs.

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and
J. S. BRICE, Defendants.

Comes now the plaintiff and files the following assignment of errors, upon which it will rely upon its prosecution of the writ of error in the above entitled cause.

I. That the United States District Court for the Eastern District of South Carolina erred in sustaining the defendants' fourth ground of demurrer to the plaintiff's complaint, which was as follows, to-wit: "It appears from the face of the complaint that this is an action against the State to collect an alleged debt, and hence the complaint does not state any cause of action of which this court has jurisdiction."

When the court should have overruled the demurrer because the suit is one brought against the defendants who, claiming to act as officers of the State, and under color of an unconstitutional statute, committed acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State, and is to recover money from such defendants unlawfully taken by them

from the plaintiff in behalf of the State or for compensation in damages, and, therefore, it is not a suit against the State, or one to which the State is a necessary party, within the provisions of the 11th Amendment to the Constitution of the United States.

II. That the court erred in ruling as a matter of law, upon the undisputed facts, that this suit is a suit against the State of South Carolina and to which the said State is a necessary party, and so is within the express prohibition of the 11th Amendment of the Constitution of the United States.

Whereas the court should have ruled that the suit is one brought by plaintiff to recover money illegally confiscated and redress grievances illegally inflicted by the individual defendants, claiming to act as the State Dispensary Commission by virtue of the authority given them by section 6 of the Act of 1910, when the said Act is, and always has been null and void, because in contravention of section 10 of Article I, and the 14th Amendment of the Constitution of the United States, and, therefore, afforded no protection or color of authority for the illegal acts of the defendants.

Wherefore the said Carolina Glass Company, plaintiff in error,

prays that the judgment of the District Court of the United States for the Eastern District of South Carolina, be reversed, and that the said District Court be directed to enter a judgment in favor of the plaintiff and plaintiff in error in this cause against the said defendants, W. J. Murray, John McSween, A. N. Wood, Avery Patton, and J. S. Brice, and each and every of them for the sum of 55 \$17,550.07, together with interest thereon from the 13th day of December, 1910, at the rate of seven per cent. per annum, and for the costs.

WM. H. LYLES,
D. W. ROBINSON,
LYLES & LYLES,

*Attorneys for Plaintiff in Error,
Plaintiff in Lower Court.*

56

Bond for Costs.

Filed May 29, 1914.

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of South Carolina.

CAROLINA GLASS COMPANY, Plaintiff in Error,

vs.

W. J. MURRAY, JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and J. S. BRICE. Defendants in Error.

Bond.

Know all men by these presents, That we, Carolina Glass Company, as principal, and United States Fidelity & Guaranty Company, as surety, are firmly held and bound unto W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice in the sum of two hundred and fifty (\$250) dollars, to be paid to said parties, to which payment well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals and dated this 25th day of April, 1914.

Whereas the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the District Court of the United States for the Eastern District of South Carolina,

Now, Therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said 57 writ of error to effect and answer all costs and damages that may be adjudged, if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, the said Carolina Glass Company, as principal, and United States Fidelity & Guaranty Company, as surety, have hereunto set their hands and affixed their seals, this 25th day of April, I. D. 1914.

CAROLINA GLASS COMPANY, [L. S.]
 By RAVENEL L. PATTERSON,
Its Manager, as Principal.
 UNITED STATES FIDELITY &
 GUARANTY COMPANY, [L. S.]
 By ROBT MOORMAN,
 A. W. BOLLIN,
Its Attorneys in Fact, as Surety.

In the presence of:

CARRIE YOUNGINER.

W. M. RISER,

As to Carolina Glass Company;

J. H. BOLLIN, JR.,

S. A. MILLFORD,

As to United States Fidelity & Guaranty Company.

Approved May 29, 1914.

HENRY A. M. SMITH,
U. S. Judge, S. C.

58 STATE OF SOUTH CAROLINA,
Richland County:

Personally appears W. M. Riser, who being duly sworn, says that she saw Carolina Glass Company, by Ravenel S. Patterson, its Manager, sign, seal and as its act and deed, deliver the above written bond for the uses and purposes therein mentioned, and that she with Carrie Younginer witnessed the execution thereof.

W. M. RISER.

Sworn to before me, this 1st day of May, A. D. 1914.

W. T. NELSON, [L. S.]
Notary Public for S. C.

STATE OF SOUTH CAROLINA,
Richland County:

Personally appears S. A. Millford, who being duly sworn, says that he saw United States Fidelity & Guaranty Company, by A. W. Bollin and Robert Moorman, its Attorneys in Fact, sign, seal and as its act and deed, deliver the above written bond for the uses and purposes therein mentioned and that he with J. H. Bollin, Jr., witnessed the execution thereof.

S. A. MILLFORD.

Sworn to before me, this *Sworn to before* the 2nd day of May, 1914.

J. HUGHES COOPER, [L. S.]
Notary Public for S. C.

59

Writ of Error.

Filed May 29, 1914.

THE UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of South Carolina, Greeting:

Because in the records and proceedings, and also, in the rendition of the judgment of a plea which is in the said District Court, before you, between Carolina Glass Company, plaintiff, and William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, defendants, a manifest error has happened, to the great damage of the said Carolina Glass Company, as by its Complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 18th day of June, 1914, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness Hon. Edward Douglass White, Chief Justice of the United States, this 29 day of May, 1914, and in the one hundred and thirty-eighth year of the Independence of the United States of America.

[Seal United States District Court, Eastern District, So. Ca.]

RICH. M. HUTSON,
*Clerk District Court of the United States
for the Eastern District of South Carolina.*

The foregoing writ is hereby allowed.

May 29, 1914.

HENRY A. M. SMITH,
*Judge United States District Court for
the Eastern District of South Carolina.*

61 THE UNITED STATES OF AMERICA, *ss.*:*Citation.*

The President of the United States of America to William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., on the 18th day of June, 1914, within 30 days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the District Court of the United States for the Eastern District of South Carolina, wherein Carolina Glass Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness Hon. H. A. M. Smith, Judge of the United States District Court for the Eastern District of South Carolina, this 29 day of May, A. D., 1914, and in the one hundred and thirty-eighth year of the Sovereignty and Independence of the United States of America.

[Seal United States District Court, Eastern District, So. Ca.]

HENRY A. M. SMITH,
United States Judge for S. C.

Attest:

RICH. W. HUTSON,
*Clerk United States District Court
for the Eastern District of South Carolina.*

62 UNITED STATES OF AMERICA,
*Eastern District of South Carolina:**In the District Court.*

I, Richard W. Hutson, Clerk of the District Court of the United States for the District of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records and proceedings in the case of Carolina Glass Company, Plaintiff, versus W. J. Murray, et al., Defendants, as appears by the records now on file in my office.

Given under my hand and seal of said Court at Charleston, S. C., in the District aforesaid, this 16 day of June, A. D. 1914.

[Seal United States District Court, Eastern District So. Ca.]

RICH. W. HUTSON.

Writ of Error.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of South Carolina, Greeting:

Because in the records and proceedings, and also, in the rendition of the judgment of a plea which is in the said District Court, before you, between Carolina Glass Company, plaintiff, and William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, defendants, a manifest error has happened, to the great damage of the said Carolina Glass Company, as by its Complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 18th day of June 1914 within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness Hon. Edward Douglass White, Chief Justice of the United States, this 29th day of May, 1914, and in the one hundred and thirty-eighth year of the Independence of the United States
64 of America.

[Seal United States District Court, Eastern Dist. S. C.]

RICH. W. HUTSON,
*Clerk District Court of the United States
for the Eastern District of South Carolina.*

The foregoing writ is hereby allowed.

29 May, 1914.

HENRY A. M. SMITH,
*Judge United States District Court for the
Eastern District of South Carolina.*

65 [Endorsed:] Docket 251. The United States of America.
Carolina Glass Company, Plaintiff, vs. William J. Murray,
John McSween, Adolphus N. Wood, Avery Patton and James S.
Brice, Defendants. Writ of Error. Filed May 29, 1914. Richard
W. Hutson, C. D. C., U. S. S. C.

66 THE UNITED STATES OF AMERICA, ss:

Citation.

The President of the United States of America to William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., on the eighteenth (18th) day of June, 1914, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the District Court of the United States for the Eastern District of South Carolina, wherein Carolina Glass Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness Hon. H. A. M. Smith, Judge of the United States District Court for the Eastern District of South Carolina, this 29th day of May, A. D., 1914, and in the one hundred and thirty-eighth year of the Sovereignty and Independence of the United States of America.

[Seal United States District Court, Eastern Dist. S. C.]

HENRY A. M. SMITH,
United States Judge for S. C.

Attest:

RICH. W. HUTSON,
*Clerk United States District Court
for the Eastern District of South
Carolina.*

67 [Endorsed:] Docket 251. The United States of America, Carolina Glass Company, Plaintiff, vs. William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, Defendants. Citation. Filed May 29, 1914. Richard W. Hutson, C. D. C., U. S. S. C. Service of the within Citation acknowledged and copy received this 30th day of May, 1914. B. L. Abney, Attorney for Defendants.

Endorsed on cover: File No. 24,314. E. South Carolina, D. C. U. S. Term No. 570. Carolina Glass Company, plaintiff in error, vs. William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice. Filed July 16, 1914. File No. 24,314.

3
7

Office Supreme Court, U. S.
FILED
OCT 30 1914
JAMES D. MAHER
CLERK

No 9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

**WILLIAM J. MURRAY, Chairman, JOHN McSWEEN,
ET AL., Constituting the State Dispensary Commission,
et al. - No. 70, October Term, 1914, in Error to
the Supreme Court of the State of South Carolina.**

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

**STATE OF SOUTH CAROLINA, No. 85, October Term,
1914, in Error to the Supreme Court of the State of
South Carolina.**

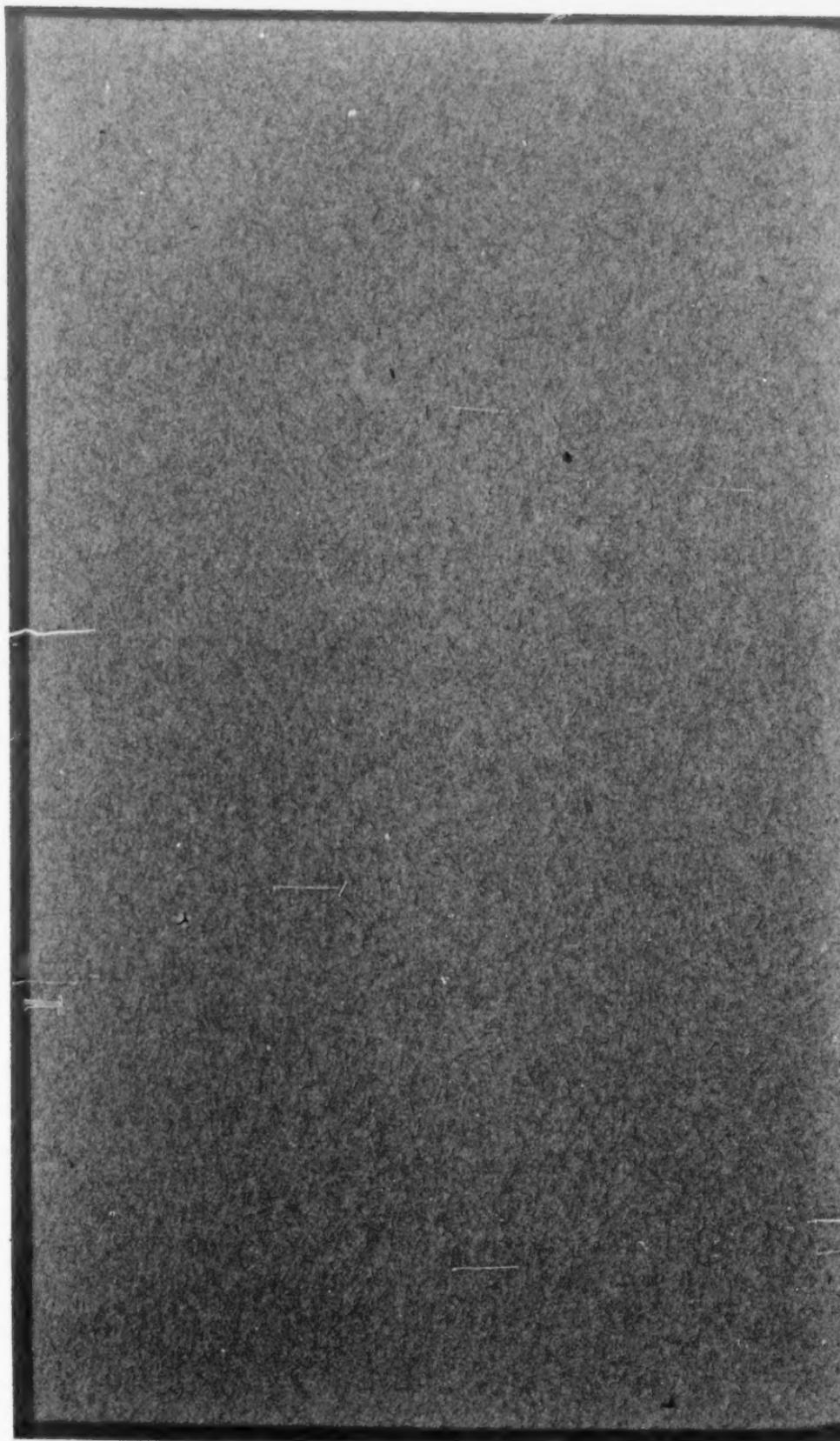
CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

**WILLIAM J. MURRAY ET AL., No. 369, October Term,
1914, in Error to the United States Circuit Court of
Appeals for the Fourth Circuit.**

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

**WILLIAM J. MURRAY ET AL., No. 570, October Term,
1914, in Error to the District Court of the United
States for the Eastern District of South Carolina.**

MOTION AND ORDER



ORDER

This was a motion to postpone the argument in Nos. 70, 85 and 569, above entitled, until No. 570 is reached and for permission to argue all of the four cases together when No. 570 is reached.

Plaintiff-in>Error having shown to the Court good reason why this should be done, and having filed stipulation between counsel to this effect, it is

ORDERED that the motion be, and the same is hereby, granted.

.....
Chief Justice.

November

1914.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

WILLIAM J. MURRAY, Chairman, JOHN McSWEEN,
ET AL., Constituting the State Dispensary Commission,
et al.: No. 70, October Term, 1914, in Error to
the Supreme Court of the State of South Carolina.

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

STATE OF SOUTH CAROLINA, No. 85, October Term,
1914, in Error to the Supreme Court of the State of
South Carolina.

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

WILLIAM J. MURRAY ET AL., No. 569, October Term,
1914, in Error to the United States Circuit Court of
Appeals for the Fourth Circuit

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

WILLIAM J. MURRAY ET AL., No. 570, October Term,
1914, in Error to the District Court of the United
States for the Eastern District of South Carolina.

MOTION.

Now comes the Carolina Glass Company, Plaintiff-in-Error in each of the above entitled causes, and by Wm. H. Lyles, its counsel of record, moves the Supreme Court to enter an order in said causes concerning the argument thereof, according to the stipulation of counsel hereto attached, that is, by postponing the argument of Nos. 70, 85 and 569 until No. 570 is reached, and then by allowing the argument of all four cases together, and presents to the Court the attached affidavits as reasons why this motion should be granted and such an order entered.

WM. H. LYLES,
Attorney for Plaintiff-in-Error
in each of the above cases.

STATE OF SOUTH CAROLINA, }
Richland County. }

Personally appears Wm. H. Lyles, who, on oath, says that he is an attorney at law duly admitted to practice in the State and Federal Courts in South Carolina and the Supreme Court of the United States.

That deponent has read the attached affidavit of Dr. McIntosh, his physician, and the same truly represents the deponent's physical condition and explains his inability to prepare or to argue four cases of the Carolina Glass Company in the Supreme Court of the United States at this time or in the near future.

That the four cases set forth in the title of this motion are all related, that is to say, the transactions giving rise to such cases were connected and grew out of each other, so that in order to understand the facts involved in each case, it is necessary to understand the facts involved in each of the cases preceding it, and the facts involved in all of the cases are so logically connected that they can all be stated together in logical form and the questions of law

presented as they arise. For this reason, it will be much more satisfactory to counsel in the causes, and deponent submits also to the Court itself, to argue all of the cases together, and will economize the time of the Court as well as of counsel.

That the causes involve the construction of six or more statutes of the State of South Carolina, the relevant portions of which will consume thirty or more pages of printing, and if the cases are argued separately, it will be necessary to consider these various statutes in each case, which deponent submits will be a needless expenditure of time and effort when this can be done once for all of the cases if they are argued together.

WM. H. LYLES.

Sworn to and subscribed before me this 28th day of October, 1914.

(Seal) JAS. B. MURPHY,
Notary Public for South Carolina.

STATE OF SOUTH CAROLINA, }
 } ss.
Richland County. }

Personally appears James H. McIntosh, who, being duly sworn, says that he is a practicing physician of the City of Columbia and State of South Carolina, and has been practicing for a number of years; that he is the family physician of Mr. William H. Lyles, an attorney at law of the City of Columbia, and has been practicing upon Mr. Lyles personally for a number of years; that Mr. Lyles, during the past summer and fall, has been suffering from spells of acute indigestion which would result, when he had undergone considerable mental exertion, or had endured other fatigue, in spells of severe vertigo; that until recently the attacks have been much more frequent during the progress of the fall, and Mr. Lyles has been positively prohibited by me, as his physician, from undertaking any considerable mental strain, such as the writing

of arguments or the trial of causes; that the condition of his health is now considerably improved, with every prospect of a permanent cure, but he is still physically unable to undergo the labor of the preparation of an important argument and, in my opinion, it would be exceedingly dangerous for him to leave his home to attend Court elsewhere in the near future.

JAMES H. McINTOSH.

Sworn to before me this 27th day of October, 1914.

JOHN T. SEIBELS, (L. S.)

Notary Public for S. C.

STIPULATION.

It is stipulated between counsel that the argument of cases Nos. 70, 85 and 569, above stated, shall be postponed until No. 570 is reached, and that then all four of the cases shall be argued together. This stipulation, however, is subject to the right of defendant-in-error to make a motion to dismiss in each or all of the cases.

It is further stipulated that such portions only of the record in No. 569 as sent up from the Circuit Court of Appeals for the Fourth Circuit shall be printed as are not contained in the printed record of No. 570, which is already printed, that is, that in printing the record in No. 569, there shall be no duplication of the printed portions of the record already printed in No. 570.

WM. H. LYLES,
Counsel for Plaintiff-in-Error.

B. L. ABNEY,
Counsel for Defendants-in-Error.

October 26th, 1914.

JAN 9 1915

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1914JAMES D. MURRAY
CLERKNO. ~~9~~ (NO. 391, OCTOBER TERM, 1913).

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

U.S.

WILLIAM J. MURRAY, CHAIRMAN, JOHN MC-
SWEEN ET AL., CONSTITUTING THE STATE
DISPENSARY COMMISSION, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

NO. ~~10~~ NO. 408, OCTOBER TERM, 1913).

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

U.S.

THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

NO. ~~100~~ 204

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

U.S.

WILLIAM J. MURRAY, JOHN MCSEEN, ADOL-
PHUS N. WOOD, AVERY PATTON AND
JAMES S. BRICE.IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FOURTH CIRCUIT.NO. ~~100~~ 205

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

U.S.

WILLIAM J. MURRAY, JOHN MCSEEN, ADOL-
PHUS N. WOOD, AVERY PATTON AND
JAMES S. BRICE.IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN
DISTRICT OF SOUTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR.

WILLIAM H. LYLES, DAVID W. ROBINSON,
JO-BERRY S. LYLES,
Counsel for Plaintiff in Error.

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**SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1914.**

NO. 70 (NO. 391, OCTOBER TERM, 1913).

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
v.s.

WILLIAM J. MURRAY, CHAIRMAN, JOHN MCSWEEN ET AL., CONSTITUTING THE STATE DISPENSARY COMMISSION, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

NO. 85 (NO. 408, OCTOBER TERM, 1913).

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
v.s.

THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

NO. 569.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
v.s.

WILLIAM J. MURRAY, JOHN MCSWEEN, ADOLPHUS N. WOOD, AVERY PATTON AND JAMES S. BRICE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

NO. 570.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
v.s.

WILLIAM J. MURRAY, JOHN MCSWEEN, ADOLPHUS N. WOOD, AVERY PATTON AND JAMES S. BRICE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR.

WILLIAM H. LYLES, DAVID W. ROBINSON,
JO-BERRY S. LYLES,
Counsel for Plaintiff in Error.

STATEMENT.

A motion was duly made and allowed in this Court whereby these four cases are to be argued together, and this brief is filed pursuant to such permission. It will be more logical to first take up No. 85 at the October Term, 1914, (408 October Term, 1913,) and to state this case and argue it first. It will then be proper to take up No. 70 at the October Term, 1914 (No. 391, October Term, 1913), and to state this case and argue it separately. It will then be proper to take up and argue together No. 569 and No. 570, and this course will be followed in the brief.

JURISDICTION.

Following the arguments of the cases, we present a discussion of the jurisdiction of this Court in each of the cases, and the relief we ask this Court to give to plaintiff in error.

No. 85.

OCTOBER TERM, 1914, (No. 408, OCTOBER TERM, 1913.)

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF SOUTH CAROLINA.

STATEMENT OF THE CASE.

The Carolina Glass Company was duly incorporated under the laws of the State of South Carolina in 1902, and from the date of its incorporation until April, 1906, it furnished bottles and demijohns to the State Dispensary, in accordance with the provisions of the Act of 1900, the relevant portions of which are printed as Appendix A to this argument. In February, 1906, a Concurrent Resolution of

the South Carolina General Assembly cancelled the existing contracts of the State Dispensary with the Carolina Glass Company (see Appendix D), but the accounts due the Company for such commodities were duly settled and all transactions to April, 1906, were ended. From April, 1906, until the State Dispensary was abolished by the Act of 1907 (see Appendix E, Section 47), the Carolina Glass Company continued to furnish bottles and demijohns to the Dispensary, by virtue of successful bids, under the Act of 1900 and the Concurrent Resolution of 1906.

In 1905, a legislative committee was appointed by Concurrent Resolution to investigate the affairs of the State Dispensary. (See Appendix B.) The Resolution authorized the committee, among other things, to investigate all transactions connected with the Dispensary and its management, present and past, and the connection of any of its officers with any corporation, concern or individual contracting for the sale of goods to the State for the Dispensary, and to ascertain the financial standing of the business of the Dispensary.

The State Dispensary was abolished by the Act of 1907, Section 47 (see Appendix E), and, by another Act of 1907, a Commission, known as the State Dispensary Commission, was provided for, whose duty it was to close out the entire business and property of the State Dispensary, collect all debts due, and pay all just liabilities of the State growing out of said business. The Commission was given "full power and authority to investigate the past conduct of the affairs of the Dispensary." It was also clothed with all the power and authority conferred upon the Dispensary Investigating Committee, which had been appointed and had acted under the Act of 1906. (See Appendix C.) This Act of 1907 was amended by the Act of 1908, so as to give the State Dispensary Commission "full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it, and no other." (See Appendix G.)

The claim of the Carolina Glass Company, plaintiff in error, was filed with such State Dispensary Commission on February 24, 1907, for the sum of twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75), the balance due to said Company by the State of South Carolina on account of glass bottles, demijohns, etc., sold and delivered to the Board of Directors of the State Dispensary under awards made by such Board of Directors in April, 1906, and subsequently. (Record, page 1.) The claim was filed under the Act of 1907, but the consideration thereof was continued under the Act of 1908, and judgment was rendered by the Commission on November 17th, 1909. (Record, pp. 1, 11-14.)

The Commission, by a vote of three to two, rendered its so-called judgment on November 17th, 1909, whereby it adjudged that the prices charged by the Carolina Glass Company during the period covered by the claim filed with the Commission, were "substantially in accord with the fair and reasonable market price of the goods sold during that period," and adjudged that the claim of the plaintiff in error for twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75) was a just liability of and a just claim against the State of South Carolina. The Commission, however, proceeded to find "That during the years preceding 1906 the overcharges made (by plaintiff in error) in excess of the fair and reasonable market price of the goods sold (to the State of South Carolina) was fifty-one thousand, four hundred thirty-two and 99-100 dollars (\$51,432.99), which should be, and is hereby, offset against the claim in favor of said Carolina Glass Company, to wit: its claim for twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75), which being deducted from the amount of said overcharges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of twenty-eight thousand, four hundred nineteen and 24-100 dollars (\$28,419.24).

"Whereupon judgment is rendered in accordance with the foregoing findings.

"W. J. MURRAY—No.
"JOHN McSWEEN—No.
"A. N. WOOD,
"AVERY PATTON,
"J. S. BRICE."

No pleading of any character was filed before the Commission specifying the offsets or counter-claims of the State, and not even any oral notice or specification of what was claimed by the State was given to plaintiff in error. At the conclusion of the testimony before the Commission, counsel for the State admitted that the claim of plaintiff in error was valid for the goods furnished since April, 1906. When some explanation was requested of the character of this claim, at even this late day, the record shows that no explanation was given, and it was not, either in theory or in fact, until the filing of the so-called judgment of the Commission that the claimant was advised of the character of the offset or counter-claim which was contended to exist in favor of the State. (R., pp. 4-11.)

MANNER IN WHICH ISSUES ARE RAISED.

On the appeal to the Supreme Court of South Carolina from such judgment of the Commission, the plaintiff in error, by its Exceptions 24, 25 and 26, presented concisely its contentions that the so-called overjudgment of the Commission was entirely void; first, because the statutes did not invest the Commission with jurisdiction to consider any such offset or counter-claim in favor of the State against plaintiff in error; and, second, because plaintiff in error had had no notice or opportunity to be heard upon such offset or counter-claim. (R., pp. 22-23.) The Supreme Court held that the authority to determine claims against the State included authority to fix and determine claims against the State included authority to fix and determine claims in favor of the State, in so far as this was

necessary to determine what were the just claims against the State. (R., pp. 25-26.) The Court, however, made no specific answer to plaintiff in error's contention that the overjudgment was invalid because there was no notice or opportunity to be heard given plaintiff on the alleged offset.

SPECIFICATION OF ERRORS RELIED UPON.

In this manner are raised the errors relied upon here, which are based upon the four assignments of error (R., pp. 32-34), and are specifically stated as follows:

SPECIFICATION FIRST.

That the Supreme Court of South Carolina should have held that the State Dispensary Commission was a Commission of limited jurisdiction, having no authority to pass upon so-called claims of the State of South Carolina against plaintiff in error, and that such Commission had no jurisdiction to offset the just and valid claim of plaintiff in error for the sum of \$23,013.75 by a supposed claim of the State against plaintiff in error on account of previous and other ended transactions between them, and that the overjudgment was void for this reason.

SPECIFICATION SECOND.

That the Supreme Court of South Carolina should have held that in the proceedings before said Commission, plaintiff in error, claimant there, had no notice by any pleading or proceeding of any character that the State of South Carolina or the said State Dispensary Commission would undertake to offset against a valid claim of plaintiff in error for goods regularly furnished since April, 1906, a supposed claim of the State of South Carolina on account of other previous, separate and distinct transactions between claimant and said State, which had been finally closed and ended, and that the judgment of offset by the Commission for this reason impaired the contract rights of plaintiff in error, deprived it of its property without due

process of law, and denied to it the equal protection of the laws and trial by jury, in violation of the Constitution of the United States.

SPECIFICATION THIRD.

That the Supreme Court of South Carolina should have held that the so-called overjudgment was null and void because the same was an effort to deprive plaintiff in error of its property without due process of law and to deny to it the equal protection of the laws and also to impair the contract rights of plaintiff in error, in violation of the Constitution of the United States.

AUTHORITIES CITED.

State vs. Dispensary Commission, 79 U. S., 316.

Murray vs. Wilson Distilling Co., 213 U. S., 151, 53 L. Ed., 742.

Den vs. Hoboken L. and I. Co., 59 U. S. (18 How.), 272, 15 L. Ed., 372.

Ekin vs. U. S., 142 U. S. 651, 35 L. Ed., 1147.

Kilbourn vs. Thomson, 103 U. S., (13 Otto), 168, 26 L. Ed., 377.

Hurtado vs. People California, 110 U. S., 516, 28 L. Ed., 232.

Cooley's Constit. Lim. (7th Ed.), 594.

Holden vs. Hardy, 169 U. S., 391, 42 L. Ed., 790.

Ex Parte Tyler, 149 U. S., 164, 187, 37 L. Ed., 689, 697.

Great Southern Fire Proof Hotel Co. vs. Jones, 193 U. S., 532, 48 L. Ed., 778.

North Am., etc., Co. vs. Chicago, 211 U. S., 306, 53 L. Ed., 195.

Kuhn vs. Fairmont Coal Co., 215 U. S., 349, 54 L. Ed., 228.

Murdock vs. Mayor, 87 U. S. (20 Wall.), 590, 22 L. Ed., 429.

Scott vs. McNeal, 154 U. S., 34, 38 L. Ed., 896.

Lake County vs. Rollins, 130 U. S., 662, 32 L. Ed., 1060.
U. S. vs. Goldenberg, 168 U. S., 95, 42 L. Ed., 394.
The State Company vs. A. W. Jones, Comptroller General, filed Oct. 10, 1914.
U. S. vs. Freeman, 3 How., 556, 11 L. Ed., 724.
U. S. vs. Gilmore, 75 U. S. (8 Wall.), 330, 19 L. Ed., 396.
State vs. Pacific Guano Co., 22 S. C., 74.
Witte vs. Weinberg, 37 S. C., 579, 593.
Sharpe vs. Kinsman, 18 S. C., 108.
Lenhardt vs. French, 57 S. C., 493.
Williams vs. Irby, 15 S. C., 458.
Rd. Com. vs. C. N. & L., 82 S. C., 418.

ARGUMENT.

SPECIFICATION FIRST.

The Acts of 1907 and 1908, which created the State Dispensary Commission and authorized it to pass upon claims *against* the State, were valid because authorized by section 2 of Article 17 of the Constitution of South Carolina, 1895, which reads:

“Sec. 2. The General Assembly may direct by law, in what manner claims against the State may be established and adjusted.”

The creditors of the State Dispensary were creditors of the State, and, as such, were forced to rely entirely upon the honor and integrity of the State as security for the payment of their obligations. It was purely a political question as to whether these debts should be paid, and the Legislature could properly delegate the determination of such a question to a commission. *State vs. Dispensary Commission*, 79 S. C., 316; *Murray vs. Wilson Distilling Co.*, 213 U. S., 151, 53 L. Ed., 742. The State Dispensary Commission was, therefore, no court, proceeding judicially,

but a branch of the legislative department, proceeding legislatively. It was required to exercise discretion or judgment, but this was done in the discharge of its legislative duty of passing upon claims *against* the State, which in no wise cast upon it the character of a judicial tribunal. *Den vs. Hoboken L. & I. Co.*, 59 U. S. (18 How.), 272, 15 L. Ed., 372; *Ekin vs. U. S.*, 142 U. S., 651, 35 L. Ed., 1147.

The State, however, had no such limitless power in passing upon the question whether any person or corporation was indebted to it, because of dealings between such person or corporation and the State or any of its agencies. The State could not determine for itself that X was indebted to her and proceed to confiscate X's property by virtue of her superior might to satisfy her claims against X. The State must proceed to the collection of her claim, as any other claimant, by due process of law and not by confiscation, and due process of law requires "*actor, reus, judex*, regular allegations, opportunity to answer and trial according to some settled course of judicial proceedings." *Kilbourn vs. Thompson*, 103 U. S. (13 Otto), 168, 26 L. Ed., 377; *Den vs. Hoboken L. & I. Co.*, *supra*. Due process of law means "law in its regular course of administration through courts of justice. * * * The provision was designed to protect the citizen against all mere acts of power, whether falling from the legislative or executive branches of the government." *Hurtado vs. People of California*, 110 U. S., 516, 28 L. Ed., 232. A judicial question must be settled by a court. "To empower one party to a controversy to decide it for himself is not within the legislative authority, because it is not the establishment of any rule of action or decision, but is a placing of the other party, so far as that controversy is concerned, out of the protection of the law, and submitting him to the control of one whose interest it will be to decide arbitrarily and unjustly." Cooley's *Const. Lim.* (7th Ed.), page 594.

It is important to get the fact clearly in mind that the dealings of plaintiff in error with the State Dispensary prior to April, 1906, were absolutely distinct and separate

from the subsequent dealings out of which arose the present claim. The dealings prior to 1906 had been closed and ended in a manner satisfactory to both parties, plaintiff in error the one and the State of South Carolina the other. These dealings were ended by the Resolution of 1906 and the payment of plaintiff in error's account for the goods furnished up to that time. (R., p. 24.) *Prima facie*, at least, therefore, the State could have no claim arising out of the accounts that it had voluntarily paid and settled. Certainly, due process of law required that any such claim could be established only by a judgment rendered in a regular judicial proceeding, instituted by the State in one of the regularly established courts. There had never been such a proceeding and, consequently, there was no judgment.

It must be conceded that the claim of plaintiff in error against the State for goods furnished subsequent to 1906 was "property" within the protection of the Fourteenth Amendment, notwithstanding that such claim could not be enforced in the courts against the State debtor. *Holden vs. Hardy*, 169 U. S., 391, 42 L. Ed., 790.

Admitting these premises, and we submit that they cannot be successfully attacked, the necessary conclusion is that the so-called judgment of the Commission was in practical effect an adjudication of the validity of the alleged claim of the State arising out of the ended transactions prior to April, 1906, and a satisfaction of such a judgment by the confiscation of plaintiff in error's property; that is, its claim against the State for goods furnished since 1906.

The Supreme Court of South Carolina practically admits the premises leading to the conclusion last above set forth, but it denies this conclusion, saying that the Acts of 1907 and 1908 authorized the Commission to determine the validity of claims by the State against persons in so far as this was necessary or proper to determine the just liability of the State to such person or corporation. (R., p. 25.)

It is true that this is the construction of the Act by the highest Court of the State, but it is a construction denying to plaintiff in error the protection claimed by it under the Federal Constitution. Plaintiff in error's constitutional rights cannot be foreclosed as against a review by this Court in such a manner, and it follows that the construction of the statutes in question is still open for the consideration of this Court.

The rights of plaintiff in error in connection with its claim filed with the State Dispensary Commission were fixed at the time it filed its claim with said Commission on February 24th, 1907, and the construction given the Acts of 1907 and 1908 by the Supreme Court of South Carolina was in its opinion filed on November 29th, 1910, so that it is a case of a construction of a State statute after the rights of the parties had vested. *Ex Parte Tyler*, 149 U. S., 164, 187, 37 L. Ed., 689, 697; *Great Southern Fire Proof Hotel Co. vs. Jones*, 193 U. S., 532, 48 L. Ed., 778, *North Am. etc., Co. vs. Chicago*, 211 U. S. 306, 53 L. Ed., 195; *Kuhn vs. Fairmont Coal Co.*, 215 U. S., 349, 54 L. Ed., 228.

In this connection, we respectfully ask the careful consideration of the Court of the opinions in *State vs. Dispensary Commission*, *supra*, March 14th, 1908, 79 S. C., 316, and *Murray vs. Wilson Distilling Company*, *supra*, April 5th, 1909, 213 U. S., 151, where we submit that the Supreme Court of South Carolina, as well as this Court, construed the Acts of 1907 and 1908 as vesting the Commission with jurisdiction to consider only claims against the State. If the reasoning of those opinions is to be followed, we submit that it would be entirely illogical to conclude that these statutes vested the Commission with jurisdiction to reopen and reconsider previous transactions, closed and ended by the exercise of the sovereign power of the State (Resolution of 1906, Appendix D), and entirely disconnected with and separated from the question of the validity or justness of the open claims then filed with the Commission. We rely upon the construction given the statutes in these cases.

Since this Court has jurisdiction under Section 709, R. S. U. S., 1 Comp. Stat. 575, 4 Fed. Stat. Ann. 467, now Section 237 of the Judicial Code, to reverse, modify or affirm the judgment or decree of the highest court of a State in any suit where is drawn in question an authority exercised under any State, on the ground of its being repugnant to the Federal Constitution, the decision of such State Court being in favor of the validity of such authority, and also where a title, right, privilege or immunity is claimed under the Federal Constitution and the decision of the State Court is against such title, right, privilege or immunity, then if this question turns upon the construction of a statute and the decision of the Supreme Court of the State should be held to be conclusive upon this Court, it would be in effect denying the constitutional and statutory right of this Court to reverse, modify or affirm the judgment of the State Court. *Murdock vs. Mayor*, 87 U. S. (20 Wall.), 590, 22 L. Ed., 429; *Scott vs. McNeal*, 154 U. S. 34, 38 L. Ed., 896.

In the first place, the construction given the Act by the Supreme Court of South Carolina is in violation of the elementary rule that in the construction of statutes, words in common use are to be construed in their natural, plain and ordinary signification and that so long as the language is unambiguous, a departure from its natural meaning is not justified by any considerations of consequence or of public policy. *Lake County vs. Rollins*, 130 U. S., 662, 32 L. Ed., 1060; *U. S. vs. Goldenberg*, 168 U. S., 95, 42 L. Ed., 394.

As recently said by the Supreme Court of South Carolina in another case:

"One of the most elementary rules for the interpretation of statutes is that the intention of the Legislature must be gathered from a literal interpretation of the language of the statute, where it is plain and unambiguous. . . . When the meaning of words is so plain and obvious, the courts cannot speculate on the intention. To do so, would

be an assumption of legislative power." *The State Company vs. A. W. Jones, Comptroller General*, filed October 10, 1914.

Section 3 of the Act of 1907 (Appendix F) makes it the duty of the Commission to close out the business and property of the State Dispensary and the County Dispensaries, "by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable." The proviso to this section then proceeds to authorize the Commission to return "all liquors illegally bought by the present management" to the persons from whom purchased, "and for determining the legality of said purchases, they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors," employ counsel, extra accountants and stenographers and take testimony. Section 8 gives the Commission power and authority to investigate the past conduct of the affairs of the Dispensary and vests it with the authority conferred upon the Committee by the Act of 1906. The amendatory Act of 1908 makes no substantial change except by the addition of Section 11, which gives the Commission full power "to pass upon, fix and determine all claims against the State, growing out of dealings with the Dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it, and no other, out of the assets of the Dispensary, which have been or may hereafter be collected by said State Dispensary Commission."

It is inconceivable to the writer how this statutory authority can be tortured into an authority to reopen the dealings between plaintiff in error and the State, which had been closed by the action of the State itself, by the resolution of 1906, cancelling the existing contracts with plaintiff in error. The authority is expressly limited to the fixing and determining of claims "against the State growing out of dealings with the Dispensary" and to the paying for the State of "any and all just claims, which have

been submitted to it and determined by it, and no other. . . .” The Commission exercised its full authority in determining that the claim of plaintiff in error for twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75) was a just and valid claim, and it was absolutely without jurisdiction to proceed to open up and adjudge the validity of the claim against plaintiff in error which had been closed and ended, and which was not filed with the Commission or brought before it for consideration by any notice or claim whatsoever.

If the Acts of 1907 and 1908 could be properly construed as said by the Supreme Court of South Carolina, why was it necessary for the Legislature in 1910 to come forward with an additional enactment expressly authorizing the Commission to pass upon and determine the validity of claims in favor of the State, arising out of previous transactions with the Dispensary? The Act of 1910 shows clearly the legislative intention to invest the Commission with authority to determine the validity of claims in favor of the State, and this certainly is a legislative construction that the Acts of 1907 and 1908 did not invest the Commission with such authority, and as such, is entitled to be considered by this Court in reaching its conclusion as to the proper construction. *U. S. vs. Freeman*, 3 How., 556, 11 L. Ed., 724; *U. S. vs. Gilmore*, 75 U. S. (18 Wall.), 330, 19 L. Ed., 396.

There can be no question that “When the State comes into her Courts to assert a right of property, she is, of course, bound by all the rules established for the administration of justice between individuals.” *State vs. Pacific Guano Co.*, 22 S. C., 74. This rule must apply equally when the State comes into or subjects herself to the arbitrament of a special tribunal.

The rule governing a counter-claim or set-off under the Code practice in South Carolina is found in Sections 170 and 171 of the Code of Civil Procedure, 1902, reading as follows:

"Section 170. The answer of the defendant must contain:

"1. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

"2. A statement of any new matter constituting a defense or counter-claim, in ordinary and concise language, without repetition.

"Section 171. The counter-claim mentioned in the last section must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

"1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.

"2. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

"The defendant may set forth by answer as many defences and counter-claims as he may have, whether they be such as have been heretofore denominated legal or equitable, or both. They must each be separately stated, and refer to the causes of action which they are intended to answer, in such manner that they may be intelligibly distinguished."

Even in the regular courts of South Carolina, the claim of the State, which must be predicated upon fraud or deceit in the ended transactions prior to April, 1906, could not be set off, as a counter-claim, or otherwise, against the claim of plaintiff in error, sounding in debt for the goods sold subsequent to April, 1906, and this for two reasons: 1. Because it does not arise out of the contract or transaction and is not connected with the subject of the action represented by plaintiff's claim against the State.

Witte vs. Weinberg, 37 S. C., 579, 593; and 2. Because the State's claim against plaintiff would sound in tort, while the plaintiff's claim against the State would sound in contract, and under our practice, a counter-claim in tort cannot be set up against a cause of action in contract. *Sharp vs. Kinsman*, 18 S. C., 108; *Lenhart vs. French*, 57 S. C., 493.

And even where the Court allows the counter-claim, it cannot be considered unless it has been duly pleaded and the other party put on notice. *Williams vs. Irby*, 15 S. C., 458. As we have heretofore pointed out, the Commission could not be invested with jurisdiction of the claim of the State against plaintiff in error, without its consent, and as we heretofore pointed out more distinctly, the plaintiff in error never consented to the Commission exercising any such jurisdiction.

We respectfully submit that these considerations show that the Acts of 1907 and 1908 did not authorize the State Dispensary Commission to consider transactions between plaintiff in error and the State of South Carolina prior to April, 1906, which had been settled and ended. This being true, we submit that the action of the Commission in going into and attempting to render judgment of offset on account of such previous ended transaction was without authority of law, and, therefore, a nullity; and, further, that the judgment of the Commission in itself established the validity of plaintiff in error's claim filed with that Commission, and this being within the statutory authority of the Commission, that the Supreme Court of South Carolina should have declared the so-called over-judgment or judgment on the offset a nullity and the judgment approving plaintiff's claim as legally establishing it. It is said that the Constitution protects as well against insidious and indirect approaches as against direct attacks, and we submit that any other conclusion would allow the State of South Carolina, proceeding through the agency of the Commission, to itself adjudge the validity of an alleged claim in favor of itself against plaintiff in error, and to

proceed to the satisfaction of such judgment, by confiscating the claim of plaintiff in error filed with the Commission.

SPECIFICATION SECOND.

But even should this Court reach the conclusion that the Supreme Court of South Carolina was correct in construing the Acts of 1907 and 1908 as investing the Commission with jurisdiction to consider and pass upon claims in favor of the State to the extent necessary to defeat claims against the State, we submit that the same result must follow. Even though the Statutes of 1907 and 1908 did authorize the Commission to consider claims in favor of the State to the extent necessary to defeat claims against the State, and even though this was a proceeding before a legislative commission, due process of law required that there must be some reasonable notice and opportunity to be heard given to claimant presenting claims before such Commission. Plaintiff in error filed its claim, as stated above, for twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75) as and for the balance due for goods furnished the State Dispensary in April, 1906, and subsequently. If the Commission was going to consider a supposed claim of the State arising out of prior closed and ended transactions by way of offset, counter-claim or otherwise, we submit the due process of law required that reasonable notice and opportunity to be heard be given claimant of such offset or counter-claim, and the record not only fails to show affirmatively that plaintiff in error had such reasonable notice and opportunity to be heard on this offset, but, on the contrary, shows that it was only after the closing of the testimony and at the time of proceeding to argument of counsel, that the State announced its position, after admitting the validity of plaintiff in error's claim as filed with the Commission, by stating generally that "we have assumed the burden to show that the State had certain offsets or counter-claims which would reduce it" (Record, page 8), and upon request of plaintiff

in error, at even that late day, that it be put on reasonable notice of what offsets were claimed, this request was denied. It will be observed also from the record that plaintiff in error in no wise consented to the consideration of any offset by the Commission. (Pp. 4-11.) In this connection, we would respectfully call the Court's attention to the case of *Rd. Com. vs. C. N. & L. R. R. Co.*, 82 S. C., 418, in which the Supreme Court of South Carolina held that a statute authorizing a legislative or administrative board to impose certain burdens was not invalid, because there was no provision for notice and hearing, because such statute would be construed as subordinate to the constitutional provision requiring reasonable notice and opportunity to be heard to be given. We submit, therefore, that the result in this case is the same whether the Statutes of 1907 and 1908 authorized the Commission to consider the offset or not, because if they authorized consideration of the offset they authorized its consideration only upon reasonable notice and opportunity to be heard—and such was not given.

SPECIFICATION THIRD.

It follows from the preceding premises that if the plaintiff in error had any vested rights in the moneys due it by the State Dispensary, and such rights were destroyed and denied by virtue and as a consequence of the over-judgment, which was void, then plaintiff in error has been deprived of its property without due process of law, denied the equal protection of the laws and suffered an impairment of its contractual rights within the meaning of the Federal Constitution.

NO. 70 (No. 391, OCTOBER TERM, 1913.)

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN MC-
SWEEN, ET AL., CONSTITUTING THE STATE
DISPENSARY COMMISSION, ET AL.,

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH
CAROLINA.

STATEMENT OF THE CASE.

This writ brings up the judgment of the Supreme Court of South Carolina in an action instituted by plaintiff in error in the original jurisdiction of that Court to enjoin defendants, constituting the State Dispensary Commission and its legal advisers, from imposing a cloud on and proceeding to confiscate certain property of plaintiff in error, in satisfaction of the so-called over-judgment of said Commission in favor of the State for twenty-four thousand, four hundred nineteen and 24-100 dollars (\$24,419.24), rendered on the claim filed by the plaintiff in error with said Commission, referred to at length in No. 85 preceding.

The verified complaint, upon which the order to show cause was issued, alleged in substance:

That plaintiff (plaintiff in error) was a corporation under the laws of South Carolina, owning valuable real estate in the City of Columbia and Richland County; and that the individual defendants, respectively, constituted the State Dispensary Commission and its legal advisers and counsel under the Act of 1908. (Appendix G.) (R., pp. 1-2.)

That plaintiff had for several years prior to 1906 sold glass bottles, etc., to the State Dispensary, and during 1906 and 1907 sold and delivered, under contracts with the

Board of Directors of the State Dispensary, bottles, etc., of the value of \$99,108, upon which there was a balance due of \$23,013.75. That plaintiff filed its claim for this sum, and the Commission, on November 17th, 1909, filed its judgment to the effect that plaintiff's claim was *per se* valid, but was offset by overcharges made by plaintiff in its contracts preceding 1906, to the extent of \$51,432.99, leaving plaintiff indebted to the State in the sum of \$28,419.24; that this judgment of the Commission was beyond its jurisdiction and void, and that plaintiff had appealed therefrom to the Supreme Court of South Carolina, which appeal was then pending. (R., pp. 2-4.)

That plaintiff, since the organization of the county dispensaries, under the Act of 1907 (see Appendix E), had been selling bottles to them, and on the 20th day of November, 1909, had orders for the prompt shipment of bottles to the county dispensaries for the Counties of Richland and Aiken and others, and had moneys due it by certain of such dispensaries for goods shipped; and then learning that his Excellency, the Governor, at the instance and request of the State Dispensary Commission, had issued orders to the Dispensary Auditor and to the County Dispensaries, directing them to withhold the amounts that might be due by such County Dispensaries to certain persons and corporations, plaintiff caused its attorneys to approach the Governor and Hon. J. Fraser Lyon, Attorney General, and to state to them the condition of affairs with reference to the dealings between plaintiff and such dispensaries, and plaintiff's counsel were referred to the defendant, Mr. W. F. Stevenson, who was said to have the matter in charge; that thereupon, on the 20th day of November, one of plaintiff's counsel, Mr. W. H. Lyles, at Columbia, S. C., called up the defendant, Mr. W. F. Stevenson, at Cheraw, S. C., and was informed by the said Stevenson that no action would be taken to interfere with or hold up the amounts that might become due to plaintiff on account of goods that might be sold or shipped to the said County Dispensaries, on or after the 20th day of November, 1909,

and, upon request, the said Stevenson confirmed this statement in writing by the following letter:

“**STEVENSON & MATHESON,**
“**Attorneys at Law.**

“Cheraw, S. C., Nov. 20, '09.

“**Mr. Wm. H. Lyles, Atty., Columbia, S. C.**

“My Dear Sir: Representing the interests concerned in collecting the back debts of the State Dispensary for overcharges, I will say that as far as shipments and deliveries to be made to the County Dispensaries are concerned, I will not ask that the money be held so as in any way to interfere with the money coming for any shipments made today or hereafter, until further notice. It being the intent of this letter to enable the Glass Co. to do business without interference from us in that way, from this time until such time as we may decide to change our policy. If we decide to change our policy as to that, we will give you timely notice, and it will affect no shipments made in the meantime. The company being a resident corporation, we haven't the difficulty as to jurisdiction which we have in other cases. I will confer with you as to the accounts due the company as soon as I have reached a determination as to them.

“Yours most truly,

“(Signed) **W. F. STEVENSON.**

“cc. to T. B. Felder, B. L. Abney and J. Fraser Lyon.”—(R., pp. 4-5.)

That pursuant to this agreement and understanding and relying implicitly thereon, the plaintiff continued to ship goods to the County Dispensaries until February 26th, 1910, they having received no notice from any one that the agreement would be violated or terminated, and on that day, the County Dispensaries of Richland, Georgetown, Aiken and Beaufort were indebted to plaintiff in the ag-

gregate sum of \$6,355.92, for goods sold and shipped after November 20th, 1909; that on said 26th February, 1910, it was brought to plaintiff's attention that a notice, reading as follows:

"State of South Carolina,
"Richland County:
"The State
v8.
"Carolina Glass Co.

"Notice is hereby given to all whom it may concern, that the above stated cause has been instituted, and is now pending before the State Dispensary Commission for the recovery against the Carolina Glass Co. of \$29,000.00, the amount which has been found to be due from the said defendant to the State of South Carolina, owing to overcharges made by the said defendant in selling goods to the late State Dispensary, and this notice is given in accordance with the terms of an Act of the Legislature passed in February, 1910, and duly approved by the Governor.

"(Signed) J. FRASER LYON,
"B. L. ABNEY,
"ANDERSON, FELDER, ROUNTREE & WIL-
SON, (R., p. 5.)
Of Counsel."

had been filed in the office of the Clerk of Court for Rich-
land County and duly recorded as an action pending, and
that a similar notice had been served upon the Chairman
of the Board for the county of Richland, and plaintiff in-
ferred that a similar notice had been served upon the
County Dispensaries of Georgetown, Aiken and Beaufort.
That this action was wholly without authority of law, the
defendants claiming to proceed under Section 7 of the Act.

of 1910 (see Appendix H), which plaintiff alleged could not be construed to apply to any action of the State Dispensary Commission prior to the Act of 1910, and that if so construed, the same was unconstitutional, null and void, because in conflict with Sections 5 and 8 of Article I of the Constitution of the State of South Carolina, and Section 10, Article I and the Fourteenth Amendment to the Constitution of the United States. (R., pp. 5-6.)

That the defendants, undertaking to proceed under Section 6 of the Act of 1910, had served upon the County Dispensary Board of Richland County a notice requiring said Board to pay over to the State Dispensary Commission the money owed by such Board to plaintiff, by virtue of the above mentioned illegal offset found to be due by plaintiff to the State of South Carolina, in the so-called judgment of the said State Dispensary Commission of November 17th, 1909, and plaintiff alleged that such notice and demand would also be made upon each of the other County Dispensaries. This action was alleged to be without authority of law, as the provisions of Section 6 of the Act of 1910 were unconstitutional, because constituting an effort to confiscate the property of plaintiff without due process of law, in violation of Sections 5 and 8 of Article I of the Constitution of South Carolina, and Section 10, Article I, and the Fourteenth Amendment to the Constitution of the United States, and, furthermore, in violation of the express contract and agreement between plaintiff and the State Dispensary Commission, through the defendant, Stevenson. (R., p. 6.)

These acts were alleged to be a cloud upon plaintiff's real estate in the County of Richland, and an interference with plaintiff in the conduct of its business and impairment of its credit, amounting to irreparable injury. The prayer was for perpetual injunction, restraining defendants from allowing notices to be continued on file in the office of the Clerk of Court for Richland County, and from in any manner demanding or receiving sums due plaintiff by the County Dispensaries, and from in any manner interfering with

the payment of such sums, and for other and further relief. (R., pp. 6-7.)

This complaint was verified by John J. Seibels, President of the plaintiff corporation (Record, p. 7), supported by the affidavits of Wm. H. Lyles and John T. Seibels of counsel for plaintiff as to the agreement on November 20th with defendant Stevenson. (R., pp. 8-10.)

RETURNS.

The defendants, Murray, Chairman, McSween, Wood, Patton and Price, constituting the State Dispensary Commission, made return to the rule to show cause, and answered to the complaint, in effect, as follows:

They admitted that they constituted the State Dispensary Commission, having been duly appointed by the Governor under the Acts of 1907 and 1908; that the defendant Lyon, as Attorney General, was adviser of the Commission; that the defendants Stevenson and Abney had been employed as special counsel covering the claim of plaintiffs and that the other defendants, constituting the firm of Anderson, Felder, Rountree & Wilson, were employed by it with the approval of the Attorney General, to represent the interests of the State in certain claims, including plaintiff's, such employment being authorized by the Act.

They admitted the character of business that plaintiff was generally engaged in and the filing of the plaintiff's claim with the Commission on February 24th, 1907, for \$23,013.75, and the judgment of the Commission rendered on the 17th day of November, and that plaintiff had appealed from said judgment, which appeal was then pending in the Supreme Court of South Carolina. (Record, pp. 11-16.) This return then admitted a resolution of November 17th, 1909, calling upon the Dispensary Auditor to hold up the payment of sums due by certain County Dispensary Boards to certain parties, but that plaintiff's name was not contained in this resolution. (Record, pp. 16-17.)

That on November 17th, 1909, plaintiff was due the aggregate sum of \$10,890.45 from the County Dispensary

Boards of Abbeville, Bamberg, Barnwell, Colleton, Fairfield, Georgetown, Kershaw, Laurens, Orangeburg, Richland, and Sumter Counties, and that such amounts were properly applicable as a credit to the amount due the State by the plaintiff (Record, p. 17); that the agreement of November 20th, 1909, between plaintiff's counsel and defendant Stevenson, was that no interference would be made with money coming from any shipments made from the date of Mr. Stevenson's letter (November 20th, 1909,) until further notice, and that with regards to the amount then due plaintiff by the County Dispensaries, the attorneys would confer and reach a determination, but that plaintiff, in violation of this agreement, collected from the County Dispensaries \$4,534.33 from the amount then due, which constituted a violation of the agreement by plaintiff. (Record, p. 18.)

This return then sets up the Act of 1910 (Appendix H), and attempts to justify the action of the defendants in filing the notice in the office of the Clerk of Court for Richland County, and in serving the notice upon the County Dispensary Board of Richland County to pay over the moneys due by said Board to plaintiff. That defendants were required to take this action by virtue of the duties imposed upon them by the Act of 1910, and it was not their intention to violate or affect the terms of the agreement made by Mr. Stevenson on November 20th, but merely to require the payment to the State Dispensary Commission of the moneys already due by the County Dispensaries to plaintiff on the 20th November. (Record, pp. 18-20.)

RETURN OF DEFENDANT STEVENSON.

Mr. Stevenson made a return in which he claimed that the agreement of November 20th, 1909, between himself and Mr. Lyles, representing the plaintiff, to the effect that the amounts due by the County Dispensaries would not be held up, had referred only to such amounts as should become due after November 20th, and it had no application to amounts then due plaintiff by the County Dispensaries,

and that the moneys then due would not be withdrawn by plaintiff. (Record, pp. 23-27.)

RETURN OF DEFENDANT ABNEY.

Mr. Abney adopted the return of the Commission herein-before referred to and admitted that he was retained as counsel by the State Dispensary Commission, covering plaintiff's claim, and that he concurred with the other counsel that it was proper to file the notice in the office of the Clerk of Court and serve the demand upon the County Dispensary Board for Richland County, but that he had no personal knowledge concerning these matters. (R., pp. 26-27.)

RETURN OF ATTORNEY GENERAL.

Mr. Lyon, by way of return, admitted that he was Attorney General, and, as such, was, under the statutes, the legal adviser of the State Dispensary Commission, and, as such, had referred Messrs. Lyles and Seibels, attorneys for plaintiff, to Mr. Stevenson, as the active representative of the Commission for a settlement of the matter of the claims of plaintiff against the County Dispensaries.

He further made return that he had acted only in his official capacity as Attorney General, according to law, and that he was not liable or responsible for the advice given and conduct concerning such matters in any action in the Courts of this State, either individually or as an officer of the State, and that the complaint stated no cause of action against him. (R., pp. 28-29.)

RETURN OF OTHER DEFENDANTS.

The other defendants, constituting the firm of Anderson, Felder, Rountree & Wilson, made a return adopting the statements in the returns of other co-respondents, so far as the same was applicable to them. (R., p. 30.)

REFERENCE OF ISSUES.

The issues of fact were referred to the Master, and the testimony taken thereon. (R., pp. 31-35.) The only real issue appearing, and the only one with which this Court is concerned is as to the agreement between the attorneys concerning the shipments to be made to the County Dispensaries and the moneys due and to be due from the County Dispensaries. The Master found on this point as follows:

“. . . I find as matter of fact that no positive agreement was reached over the telephone, but that the agreement that was made is embodied in the letter of Mr. Lyles to Mr. Stevenson (the substance of which was communicated to him over the telephone) and the reply of Mr. Stevenson thereto (said reply having been written before the receipt of Mr. Lyles' letter), said letter having been promptly received by Mr. Lyles, and became the basis of his action in the matter in controversy.” (R., p. 54.)

The letter from Mr. Lyles to Mr. Stevenson is found in the Record, pp. 4 and 5, and the letter from Mr. Stevenson to Mr. Lyles is found in the Record, at p. 9.

MANNER IN WHICH QUESTIONS ARE RAISED.

The Supreme Court of South Carolina held that the County Dispensaries were conducted “under the authority and in the name of the State,” that the officers in charge of them were agents of the State, and that the funds arising from the sale of liquors through them were the funds of the State, and the debts due for goods sold to them were the debts of the State, and furthermore, that the Dispensary Commission and its counsel were the agents and representatives of the State. The Court then held that the Commission, in ordering the funds in the hands of the County Dispensaries, due and owing to the plaintiff in error, to be turned over to the Commission was acting

within the limits of its authority and discretion as conferred upon it by the Legislature, and that the Supreme Court had no power to interfere. As to the alleged lien over the property of the plaintiff and the notice of the pendency of the action filed in the office of the Clerk of Court of Common Pleas for Richland County, where plaintiff in error's real estate was situated, however, the Court held that these were invalid, because:

1. The Act of 1910 was not retroactive and could not operate to create a lien upon the property of plaintiff in error by virtue of the prior judgment of the Commission, and because
2. The Act of 1910, in so far as it attempted to vest in the Commission the power to pass final judgment upon a claim of the State against plaintiff in error, was unconstitutional in that it was an effort to vest judicial power in the Commission, which was no court, and so was not due process of law.

This Court will see at first glance that the Supreme Court of South Carolina held that the so-called over-judgment of the Commission was entirely invalid to operate under the subsequent Act of 1910 as a final judgment on the alleged claim of the State against plaintiff in error and create a lien upon plaintiff's real estate, while, at the same time, it held that the so-called over-judgment was entirely valid and proper to operate under the Act of 1910, and authorize the defendants to sequester and confiscate the moneys due and owing to plaintiffs from the County Dispensaries, upon the theory that the plaintiff in error had absolutely no right in or connected with such moneys so as to protect it against their confiscation by the brutal power of the State, without the justification of any proceedings according to due process of law. This ruling of the Court gives rise to the two propositions that we make before this Court and the failure of the Court to hold which we now specifically assign as error, as follows:

SPECIFICATION OF ERRORS RELIED UPON.

SPECIFICATION FIRST.

That the so-called over-judgment of the Commission of November 20th, 1909, was absolutely null and void.

SPECIFICATION SECOND.

That the plaintiff in error had contract and property rights in the money due and owing it from the County Dispensaries and the sequestration and confiscation of this money by the defendant claiming to act by virtue of their office as members and advisers of the State Dispensary Commission by virtue of the so-called over-judgment of November 20th, 1909, and the authority claimed to have been conferred upon them by the Act of 1910, impaired the obligation of plaintiff in error's contract rights with reference to such moneys, in violation of Section 10, Article I, of the Constitution of the United States, deprived plaintiff in error of its property without due process of law and denied to plaintiff in error the equal protection of the laws, in violation of the Fourteenth Amendment.

AUTHORITIES CITED.

Curran vs. Arkansas, 15 How., 304, 14 L. Ed., 705.
Dabney, Morgan & Co. vs. Bank of S. C., 3 S. C., 125.
Baring vs. Dabney, 86 U. S., 1, 22 L. Ed., 95.
Davis vs. Gray, 83 U. S. (16 Wall.), 203, 21 L. Ed., 447.
Green vs. Biddle, 8 Wheat., 1, 92, 5 L. Ed., 547, 570.
Bank vs. Sharpe, 6 How., 301, 12 L. Ed., 448.
Edwards vs. Kaersey, 96 U. S., 595, 24 L. Ed., 793.
State vs. Dispensary Commission, 79 S. C., 316.
Murray vs. Wilson Distilling Co., 213 U. S., 151.

Argument.

SPECIFICATION FIRST.

The claim of the State against plaintiff in error for over-charges arising out of the dealings between plaintiff in error and the State Dispensary, prior to April, 1906, was a claim necessarily founded upon fraud or deceit in the settlement of 1906 or the prior dealings then settled. The State could not establish or adjudicate such claim by legislative fiat, since due process of law required its adjudication by a regular proceeding in a court of justice.

The Dispensary Commission, under the Acts of 1907 and 1908, was no court, but a representative of the legislative department endowed only with legislative functions. The Acts of 1907 and 1908 did not attempt to endow the Commission with authority to adjudge the validity of claims in favor of the State, but if they made such an effort, it was a futile one because in conflict with the Fourteenth Amendment.

So, in either view, the Commission had no constitutional authority to render a judgment on the claim of the State against plaintiff in error, and its effort to do so was a nullity.

This is elementary, is sustained by the authorities cited in our argument under No. 85, *supra*, and is recognized in the very opinion of the Supreme Court of South Carolina. We quote:

"The findings of the Commission, however, are controlling only in its determination of the non-liability of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper court to recover the amount found by the Commission to be due it by appellant." R., p. 64.)

"The Constitution ordains (Art. I, Sec. 14) that 'the legislative, executive and judicial powers of

the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.' This language is as strong as it is simple and clear. The Legislature, therefore, cannot assume to itself the exercise of judicial powers. *Seegers vs. Parrott*, 54 S. C., 1. Nor can it confer 'judicial powers,' in the sense in which those words are used in the Constitution, upon any other body than the Courts mentioned and provided for in Section I, Article V, of the Constitution, which provides that 'the judicial power of this State shall be vested in' the Courts therein specifically mentioned and provided for. The few instances in which judicial power is vested elsewhere are provided for in the Constitution itself, and, with these few exceptions, the whole of the element of sovereignty known as judicial power was vested by the people in their Courts, and none of it was left to be lodged elsewhere. In fact, every person exercising the functions of either of the other departments of the Government are forbidden to assume or discharge those vested in the Courts. We have already seen that the Dispensary Commission is not a court within the meaning of the judicial article of the Constitution, but is a special tribunal, created under the power of the Legislature to investigate the financial affairs of the State, and that provision of the Constitution which authorizes the Legislature to direct by law how claims against the State shall be established and adjusted." (R., pp. 68-69.)

" . . . It would not be contended for a moment that the Legislature could, even upon the fullest, fairest and most deliberate investigation, after due notice, pass a valid Act declaring that a particular individual is indebted to the State in a given amount, and by legislative fiat create a lien upon

his property. Such an Act would not only be an unwarranted usurpation of judicial power, but would also be an infringement of the constitutional guaranty that no person shall be deprived of his property without due process of law or be denied the equal protection of the law. If, then, the Legislature could not pass such a judgment, it cannot confer upon a commission the power to do so. The creature cannot be greater than the creator. . . . We conclude, therefore, that in so far as the Act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff, it is unconstitutional, null and void. And, as the lien which the Act attempts to create is based upon the unauthorized act of the Commission, it is likewise null and void." (R., pp. 69-70.)

The over-judgment of the Commission was a nullity and furnished no legal authority to defendants to proceed under the Act of 1910 to confiscate the money due plaintiff in error in the hands of the County Dispensaries. If plaintiff in error had any vested rights concerning such moneys, property or contractual, within the protection of the Federal Constitution, then these rights should have been protected by the Court.

SPECIFICATION SECOND.

"Exhibit C," filed by the defendant on the reference before the Master, shows that on November 20th, 1909, the various County Dispensaries were indebted to plaintiff in the aggregate sum of \$10,420.14, and that on February 26th, 1910, this indebtedness had been increased to \$11,912.44, and after November 20th, the various County Dispensaries had paid to plaintiff in error the aggregate sum of \$6,915.95. (R., pp. 52, 54.) This indebtedness arose out of the sales of goods by plaintiff in error to the County Dispensaries which were made under the terms of the Act

of 1907. (Appendix E.) This constituted a contract, and the question is whether it was a contract of such a character as to give plaintiff in error any rights within the impairment and due process clauses of the Federal Constitution.

We submit that the scheme of the Act of 1907 was to make the funds and business of each of the County Dispensaries a separate and distinct fund; to segregate such particular fund from the general funds of the State of South Carolina, and to make such particular fund responsible for the obligations incurred with reference to it: in this way, creating a fund in which plaintiff in error, as a creditor thereof, acquired vested contractual and property rights within the protection of the Constitution.

The Act of 1907, after forbidding the sale of alcoholic liquors in other manners, proceeds (Section 2) to provide for a special election in each County to determine whether liquor shall be sold in such County and "whether one-third of the license fees and Dispensary profits" shall be paid to the County Treasurer, to be applied to the County school fund or to roads and bridges.

Section 5 proceeds to provide for the appointment of a "County Dispensary Board" by the Governor, upon the recommendation of certain County officers, certain officers of any municipality within which a dispensary may be located, and the county delegation to the General Assembly, with the proviso that in certain counties the recommendation is to vary between these classes of recommenders. Each member of the Board is required to furnish bond and the Board is required to organize by the election of a chairman and a secretary from among their number. Provision is made for compensation for the members of the Board. The Board is authorized and required to establish dispensaries for the sale of alcoholic liquors at such places within their County as they deem proper, and to make rules and regulations for the government of such dispensaries. The Board is required to elect dispensers, clerks, etc., and to provide for their compensation.

Section 6: "The members of the said County Dispensary Board are hereby declared to be County officers, and are hereby authorized and empowered, under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: *Provided*, That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made."

Section 7 requires the Board to advertise for bids to supply liquors and specifies the manner in which bids shall be submitted "and the contract awarded to the lowest responsible bidder of each kind, the Board reserving the right to reject any bid. . . . Said award shall be forthwith published once in a newspaper published in the County. Said published statement shall include the grade of goods purchased, quantity of each grade purchased, from whom purchased, price per gallon, or dozen packages, and the retail price at which the same is to be sold. . . ."

Section 8 requires an analysis of the liquors to determine their purity, and "If upon analysis it shall be determined that such liquors are adulterated or impure, the County Dispensary Board may retain the price thereof from the seller, or if they have been paid for, the said Board shall not allow said liquors to be sold, and may, in the name of the State, institute an action against the seller for the recovery of the amount so paid."

Section 9: "The County Dispensary Board shall, during the first week of each month, make a sworn statement of the receipts, expenditures and liabilities of each Dispensary for the preceding month, and cause the same to be published once in some newspaper published in the County during that week."

Section 11: "Each Dispenser shall daily deposit, to the credit of the County Board, in a bank designated by the Board, all monies received by him from sales."

Section 13: "All sales shall be for cash and at a profit to be determined by the Board."

Section 18 requires the County Dispensary Board to file quarterly with the Clerk of Court a sworn statement of the profits of each dispensary in the County for the three preceding months, and requires this statement to be recorded by the Clerk and published by the Board in a newspaper. The Board is then required to divide the profits into three equal parts, one-third to be paid to the County Treasurer for ordinary expenses, one-third to the same officer for the County school fund or for roads and bridges, and one-third to the treasurer of the municipality in which the dispensary is located for ordinary expenses.

Section 35 specifically provides that in the event a dispensary established under the Act should afterwards be voted out, the County Dispensary Board in such County "shall immediately close the Dispensary therein, dispose of the stock on hand for cash . . . , apply the proceeds thereof, with any other assets, to the payment of outstanding obligations, and divide the net proceeds as hereinbefore provided for Dispensary profits."

Sections 39 to 44 provide for the appointment of a Dispensary Auditor to examine at least once every three months into the affairs of all dispensaries and liquor manufacturing establishments conducted in the State. The Auditor is required to examine all books, papers and affairs of such concerns, with authority to administer oaths and to summon and examine all persons connected with them, and is required to file a detailed report with the State and County Treasurers. The Auditor is required to prescribe a system of bookkeeping and accounts for the several Boards and to enforce the observance of the same.

We submit that this shows an intention on the part of the State to make the funds of each County Dispensary applicable first to the payment of the expenses of such institution, including the purchase price of supplies bought by such institution, with the understanding that the State was not liable for such purchase price beyond the assets of the Dispensary in question, and conversely, neither the State nor County had any interest in such assets until

after such expenses had been paid and the profits reached. When Section 11 requires each Dispenser to deposit to the credit of the County Board in a bank designated by the Board all moneys received by him from sales; when Section 9 requires the Board to publish monthly sworn statements of the receipts, expenditures and liabilities of each Dispensary; when Section 13 provides that all sales are to be for cash and at a profit, and when Section 18 requires a quarterly division of the profits in each County, then we submit that the intention of the General Assembly is clearly shown, as strongly as if express language was used, that the moneys received by the County Dispensaries, operating as a unit in each County, are to be subject first to the expense of such institution, including the money owed for goods purchased. The Act specifically provides for the dispensation of the profits, and the provisions quoted show the necessary, if not express, implication that the County Boards are to pay for goods purchased. Section 8 recognizes this by requiring the County Board to withhold the price of defective liquors or to recover the price if it has been paid. Section 35 requires in the case of a defunct dispensary in any County that the assets are to be first applied "to the payment of outstanding obligations."

The practical operation of the County Dispensaries under this Act shows that the State has always treated the County Dispensary Boards just as it has other departments of the County government. The Board is selected, one by the County Board of Education, one by the town or city officers of the municipality in which a dispensary is located and one by the members of the County legislative delegation. The Governor commissions the Board just as he does other County officers. The funds in the possession of said Board arising from the sale of liquors are applied, first, to the payment of the debts for such liquors and supplies, and to the expenses of operation, and then divided and paid out for county and municipal purposes. Other than the attempt in the Act of 1910, there has never been any effort on the part of the State to claim or enforce any

interest even in the profits arising from the operation of the County Dispensaries, and much less has there ever been an effort on the part of the State to claim any interest in the funds due to the creditors of such dispensaries.

It would be absurd to contend that the Act did not contemplate that the County Dispensary Boards were to pay for supplies purchased. The Dispensaries were intended to operate as ordinary business institutions and the only logical deduction from the Act, if it is not expressly provided, is that they were to pay for such supplies, because, otherwise, the primary purpose to conduct such business on a commercial basis could not be accomplished.

We submit that this situation comes within the head, to use the language of Judge Story, "of implied trusts upon presumed intention (although it might equally well be deemed to fall under the head of implied trusts by operation of law). . . ." *Curran vs. Arkansas, infra.*

We rely particularly upon *Curran vs. Arkansas*, 15 How., 304, 14 L. Ed., 705, in support of this position. There the State incorporated a bank "with the usual banking powers of discount, deposit and circulation," and the State was its sole stockholder. The capital stock of the bank was raised by the sale of State bonds, together with certain other sums paid in by the State. The plaintiff was the owner and bearer of bills of the bank, and the Court held that the State could not afterwards divert the capital stock of the bank, because it had become a trust fund, impressed with a trust, by implication or operation of law, in favor of the plaintiff. There was no express provision in the Act creating and defining the powers of the bank, authorizing or requiring it to pay the bills of credit it might issue. Such a provision would have been absurdly superfluous because the authority to issue naturally carried the authority and requirement to pay. So, under our Act, the authority to buy carries by necessary implication the authority and requirement to pay, because it would have been absurd to presume that the sellers of liquors and supplies would donate them to these county institutions.

It is true that the County Dispensary Boards are not technically corporations, such as the bank, but they are created by the Act as a unit or a legal organization to conduct this business, and so far as this difference goes, it is a distinction but not a difference. The County Dispensary Boards were made by the Act agents of the State for the purpose of conducting this business and the State deposited its property in their hands (or rather provided a manner in which such institutions could acquire a fund upon which to do business), and by this statute held out to the sellers of supplies and liquors that if they would deal with the County Dispensaries, they would be paid for liquors and supplies purchased, out of the funds arising from the sale of such by the County Dispensary Boards, with the express limitation only that the State would not be liable beyond the assets of such Board, but with the further inducing statement that neither the State nor the County claimed any interest in the funds in hand of such Boards until expenses had been paid.

In answer to the proposition that, under such circumstances, the State could afterwards confiscate the funds in the hand of such Boards which lay there to pay the admittedly *bona fide* claim of a creditor, we refer the Court to the language in *Curran vs. Arkansas*, and submit that it is conclusive:

"The obligations of its contracts, the funds provided for their performance, and the equitable rights of its creditors were in no way affected by the fact that a sovereign State paid in its capital, and consequently became entitled to its profits. When paid in and vested in the corporation, the capital stock became chargeable at once with the trusts, and subject to the uses declared and fixed by the charter, to the same extent, and for the same reasons, as it would have been if contributed by private persons

"If a person deposit his property in the hands of an agent, he may revoke the agency and withdraw his property at his pleasure. But if he should request third persons to accept the agent's bills, informing them, at the same time, that he had placed the property in the hands of that agent to meet the bills at their maturity, and upon the face of such assurance the agent's bills are accepted, the principal cannot, by revoking the agency, acquire the right to withdraw his property from the hands of the agent.

"It is no longer exclusively his. They who, on the faith of its deposit, have changed their condition, have acquired rights in it. The matter no longer rests in a mere delegation of a revocable authority to an agent, but a contract has arisen between the principal and the third persons from the representation made, and the acts done on the faith of it, and the property cannot be withdrawn without impairing the obligation of that contract. . . .

"The bank received this money from the State as the fund to meet its engagements with third persons, which the State, by the charter, expressly authorized it to make for the profit of the State. Having thus set apart this fund in the hands of a bank, and invited the public to give credit to it, under an assurance that it had been placed there for the purpose of paying the liabilities of the bank, whenever such credit was given, a contract between the State and the creditor not to withdraw that fund to his injury, at once arose. That the charter, followed by the deposit of the capital stock, amounted to an assurance, held out to the public by the State, that anyone who should trust the bank might rely on that capital for payment, we cannot doubt. And when a third person acted on this assurance, and parted with his property on the faith of it, the transaction had all the elements of a binding contract, and the

State could not withdraw the fund, or any part of it, without impairing its obligation. . . .

"In our judgment, the State cannot be considered to have occupied this position. It had placed its bonds in the possession of the bank, with authority to sell them and hold their proceeds as capital. It had also paid over to the bank certain other funds, with an express declaration, contained in the thirteenth section of the charter, that these also were to be part of its capital, and were to have credited to them their proportion of dividend of the profits of the business. All these moneys were thus set apart in the hands of the bank, as a fund, upon the credit of which it was to issue bills, and which was to be liable to answer the engagements of the bank, contracted to its creditors, in the course of the business which it was authorized to transact for the profit of the State. Such is the necessary effect of the express declaration in the charter, that these funds constitute the capital of the bank."

Curran vs. Arkansas was expressly approved in *Dabney, Morgan & Co. vs. Bank of S. C.*, 3 S. C., 125, and *Baring vs. Barney*, 86 U. S., 1, 22 L. Ed., 95.

We deem it unnecessary to argue further that the terms and provisions of the Act of 1907 entered into the contracts of sale between plaintiff in error and the County Dispensary Boards, even though the latter were acting as agents of the State, and that the State is bound by her contract and cannot later impair its obligation to the slightest extent or deprive plaintiff in error of its property rights with reference thereto, without due process of law. *Davis vs. Gray*, 83 U. S. (16 Wall.), 203, 21 L. Ed., 447; *Green vs. Biddle*, 8 Wheat., 1, 92, 5 L. Ed., 547, 570.

The impairment clause forbids any change affecting the validity, construction, discharge or enforcement of the contract. It forbids any impairment at all. It is not a question of degree, or manner or cause, but of in any way

destroying the value of the contract of plaintiff in error. *Bank vs. Sharpe*, 6 How., 301, 12 L. Ed., 548; *Edwards vs. Kaersey*, 96 U. S., 595, 24 L. Ed., 793.

This shows that plaintiff in error had rights in the contracts with the County Dispensary Boards, even though such Boards were agents of the State, which were within the protection of the impairment and due process clauses of the Federal Constitution, and if this be true every court that has handled the matter has admitted that the action of defendant was entirely without authority of law and in violation of such constitutional protection.

**STATE VS. DISPENSARY COMMISSION AND MURRAY VS. WILSON DISTILLING COMPANY
DISTINGUISHED.**

We would respectfully refer the Court to the essential distinction between the questions presented to the Supreme Court of South Carolina in *State vs. Dispensary Commission*, *supra*, 79 S. C., 316, and this Court in *Murray vs. Wilson Distilling Company*, 213 U. S., 151, where the Courts considered the effect of the State Act of 1896, as amended in 1897 (which is practically the same as the Act of 1900, which amends such previous Acts and is printed as Appendix A), in connection with the effect of the Act of 1907. (Appendix F.) The decisions, of course, turn on the question of the right of the State to vest in the Commission a discretion to determine the just debts of the State for purchases of liquor. The Supreme Court of South Carolina, at 79 S. C., 331, has in mind the distinction that we have argued at length between general funds of the State and the rights of a general creditor of the State therein or thereto, and specific funds of the State which are segregated and set aside, with the promise inducing persons to deal with agencies of the State, upon condition that their debt is to be paid out of these particular funds. Under the statutes considered in these cases, there was no segregation of the State Dispensary money and no separation of this fund from the general funds of the

State, nor can there be found in such statutes under any reasonable construction a promise on the part of the State to pay persons selling goods to the State Dispensary out of any particular fund. There was, in other words, in these cases no application of the funds and no inducing promise to pay the creditors out of such a fund, which is the essential distinction that we have attempted to show exists in our case.

STEVENSON CONTRACT.

In addition to the contract arising from the dealings of plaintiff with the County Dispensaries under the Act of 1907, we submit that the interchange of letters between the attorney for plaintiff in error and the attorney for the defendants (R., pp. 4-5, 9) establishes a binding contract protecting the plaintiff in error as to the funds becoming due to it after November 20th, 1909. Under the findings of the Master, hereinbefore referred to, the Court will see that there was a definite contract as to the moneys to become due to plaintiff in error after November 20th, 1909, but there was no definite agreement as to the withdrawal of the moneys then due for prior shipments. (R., p. 54.) The record shows that the counsel for plaintiff in error were referred by the Governor and the Attorney General to Mr. Stevenson as the party having this matter in charge (R., p. 54), and in this way the authority of Mr. Stevenson to bind the defendants, as well as the State, by his agreement, is beyond question. We submit that the State, having become a party to this special contract and the plaintiff in error having acted in good faith upon it, the State, as well as defendants, is bound by it.

No. 570.

OCTOBER TERM, 1914.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
vs.

WILLIAM J. MURRAY, JOHN McSWEEN, ADOL-
PHUS N. WOOD, AVERY PATTON AND
JAMES S. BRICE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

No. 569.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
vs.

WILLIAM J. MURRAY, JOHN McSWEEN, ADOL-
PHUS N. WOOD, AVERY PATTON AND
JAMES S. BRICE.

IN ERROR TO UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FOURTH CIRCUIT.

STATEMENT OF THE CASE.

In December, 1911, the plaintiff in error brought suit in the District Court of the United States for the Eastern District of South Carolina against the individual defendants who constituted the State Dispensary Commission. The complaint alleged that the defendants constituted the State Dispensary Commission and that the plaintiff had sold certain goods to the County Dispensary Boards, under the Act of 1907 (R., pp. 1-2), and that such County Dispensary

Boards were indebted to plaintiff in error in the aggregate sum of \$19,084.38, "all of which claims had been duly audited and approved by the said Dispensary Auditor for the State of South Carolina, and the said several County Dispensary Boards held the funds appropriated and ready to pay over to this plaintiff in satisfaction of said several balances." (R., p. 3.)

The complaint then proceeded to allege the dealings between the plaintiff and the old State Dispensary, which have been stated at length, the organization of the State Dispensary Commission, under the Acts of 1907 and 1908, and the alleged overjudgment of said Commission of November 17th, 1909. (R., pp. 3-4.) The complaint then alleged that the alleged over-judgment was absolutely null and void. (R., p. 4.) That plaintiff had been selling bottles to the County Dispensaries, and on November 20th, had orders for the prompt shipment of such bottles to the County Dispensaries for Richland, Aiken and other Counties, and that, fearing to make such shipments, because plaintiff had been informed that the State Dispensary Commission intended to hold up the moneys to be due it therefrom, the plaintiff in error entered into the agreement with the State, through its agent, Mr. W. F. Stevenson, represented by the letter of Mr. Stevenson, dated November 20th (R., pp. 4-5); that in pursuance of this agreement and relying implicitly thereon, the plaintiff continued to ship goods to the several County Dispensaries until the 26th day of February, 1910, when such Dispensaries were indebted to plaintiff for goods shipped after November 20th in the aggregate sum of \$6,355.92, which sum is included in the aggregate sum of \$19,084.38, already alleged. That the defendants, undertaking to proceed under Section 6 of the Act of 1910, demanded from the County Dispensary Boards of the Counties of Clarendon, Richland and Georgetown the sums of money due plaintiff, as alleged, amounting to \$19,084.38, "and unlawfully and wrongfully received the said sums of money from said several County Dispensary Boards, claiming that they were entitled to the

same on account of the above mentioned illegal offset found by said State Dispensary Commission to be due by this plaintiff as aforesaid; which action this plaintiff alleges was wholly without authority of law, as the provisions of said section 6 of the Act of February 23rd, 1910, were unconstitutional, null and void, as constituting an effort, unwarrantably and without authority, to confiscate the property of this plaintiff without due process of law, the provisions of said section being in violation of section 10 of Article I of the Constitution of the United States, and also of the Fourteenth Amendment of the Constitution of the United States; and, furthermore, in violation of the express contract and agreement entered into by this plaintiff with the defendants above named as above alleged." (R., p. 6.)

The defendants duly filed their joint and several answer and later filed a supplemental answer. (R., pp. 8-15.) Upon the call of the case for trial, the defendants duly presented their demurrer to the complaint notice of which had been properly given under the South Carolina practice. (R., p. 17.) The Court stated that it would hear the whole case before determining the demurrer and decide all of the issues at one time, and thereupon, a stipulation was duly filed, waiving a trial by jury and the evidence was taken.

The District Court found the facts and stated them at length in its opinion, but after reviewing the entire case, the Court sustained the demurrer and entered judgment dismissing the complaint upon this ground. (R., p. 26.) We deem it necessary to call attention only to certain facts found by the District Court. That Court found that on the 23d day of February, 1910, the County Dispensaries owed to the plaintiff in error \$4,963.13. The Court then proceeded:

"Subsequent to 23d February, 1910, and between that date and 13th December, 1910, the plaintiff delivered to the County Dispensary Board for Rich-

land County additional supplies of glassware for which there was admittedly due to plaintiff \$12,586.64, which, added to the \$4,963.13 due on 23rd of February, 1910, made a total of \$17,550.07 admittedly due to plaintiff on December 13, 1910.

"On that day, viz., 13 of December, 1910, the County Dispensary Board for Richland County paid the sum of \$17,550.07 to the State Dispensary Commission under the circumstances stated in the receipt given for the same, viz.:

" 'Columbia, S. C., December 13th, 1910.

" 'Received from the Richland County Dispensary Board the sum of seventeen thousand five hundred and fifty 07-100 dollars (\$17,550.07), being the amount in the hands of the Richland County Dispensary Board to the credit of the Carolina Glass Company for goods and merchandise bought by the Richland County Dispensary Board from the Carolina Glass Company, which amount is paid to the State Dispensary Commission upon its demand made in pursuance to the provisions of the Act of the General Assembly, entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved 23 day of February, 1910, and in pursuance of the judgment of the Supreme Court in the case of the *Carolina Glass Company vs. Dr. W. J. Murray et al.*

" 'STATE DISPENSARY COMMISSION,

" 'By W. J. Murray, Chairman.

" '\$17,550.07.'

"On 22 of November, 1910, (after the filing of the opinion of the Supreme Court of South Carolina in *Glass Co. vs. State of S. C.*), the plaintiff in this case gave the defendants personally notice that they would be held personally liable for any funds due to plaintiff by any County Dispensary Board which the defendants should hold and not pay over to the plaintiff.

"On receiving this amount of \$17,550.07, the defendants held it until 27 of March, 1911, when they turned it over to the persons who had been appointed as members of the State Dispensary Commission in succession to the present defendants, who had ceased to be such." (R., p. 20.)

MANNER IN WHICH ISSUES ARISE.

The District Court then held that the action was one against the State of South Carolina because the plaintiff had no interest in, lien upon or title to the specific fund of \$17,550.07, so as to give it a definite vested right therein, which was protected by the Federal Constitution, but that, on the contrary, such fund belonged to the State, and since plaintiff was only a creditor of the State, that the State was a necessary party to any judicial proceedings attempting to subject this fund to a judgment. The Court further held that there was an essential difference between the sum of \$4,963.13, due on the 23rd of February, 1910 (when the Act of 1910 was passed), and the sum of \$12,586.64, which became due after the Act of 1910 had been passed, and that as to this latter sum the rights accrued subsequent to the passage of the Act and could not have been divested or impaired by it or taken without due process of law. Upon these findings, we specifically assign and rely upon as error, the failure of the Court to hold as follows:

SPECIFICATIONS OF ERRORS RELIED UPON.

SPECIFICATION FIRST.

That the plaintiff had a specific vested interest in the funds due it by the County Dispensaries, both before and after February 23rd, 1910.

SPECIFICATION SECOND.

That the Court should have held that the suit was one brought against the defendants, who, claiming to act as officers of the State and under color of unconstitutional statutes, committed acts of wrong and injury to the rights and property of the plaintiff acquired under contracts with the State, and was to request money from such defendants unlawfully taken by them from plaintiff, on behalf of the State, or for compensation in damages, and, therefore, was not a suit against the State nor one to which the State was a necessary party.

SPECIFICATION THIRD.

That the Court should have held that the plaintiff had vested interests and rights in and connected with the money becoming due after February 23rd, 1910, as well as that which had become due before that date, which rights and interests were protected by the Constitution of the United States.

No. 569.

On the writ of error taking this case to the Circuit Court of Appeals for the Fourth Circuit, that Court affirmed the judgment of the District Court in dismissing the complaint upon the ground that the suit was one against the State, and, therefore, could not be maintained under the Eleventh Amendment to the Federal Constitution. As we later point out in our argument, as to the jurisdiction of this Court, the case is one which should have been brought direct to this Court upon writ of error, and, therefore, the judgment of the Circuit Court of Appeals is a nullity, because it was without jurisdiction, the jurisdiction of this Court being exclusive; but, irrespective of this, we advance the same reasons why the judgment of that Court is erroneous, and should this Court decide that it can review that judgment, we ask it to consider the same specifications of error relied upon here as applicable to the judgment of that Court—because, in any event, as we shall later show,

the case is one that plaintiff in error is entitled to have reviewed by this Court.

AUTHORITIES CITED.

U. S. vs. Lee, 106 U. S., 196, 27 L. Ed., 179.

Poindexter vs. Greenhow, 114 U. S., 207, 29 L. Ed., 192.

Ex Parte Tyler, 149 U. S., 190, 37 L. Ed., 698.

ARGUMENT.

SPECIFICATION FIRST.

Under our argument of "Specification Second" in No. 70 preceding, we have discussed the situation at length in the effort to show that under the Act of 1907, the dealings between plaintiff in error and the County Dispensary Boards gave plaintiff in error vested contract and property rights within the protection of the Federal Constitution. This constitutes the "interest in, lien upon or title to the specific fund" which the District Court failed to find.

We would, however, call particular attention to the receipt given by the State Dispensary Commission to the Richland County Dispensary Board on December 13th, 1910, wherein the Commission admits receiving \$17,550.07, "being the amount in the hands of the Richland County Dispensary Board to the credit of the Carolina Glass Company for goods and merchandise bought of the Richland County Dispensary Board from the Carolina Glass Company. . . ." If anything further was needed to complete our argument under No. 70, this practical acknowledgment that the moneys due plaintiff in error had been set aside by the County Dispensary Board under the terms of the Act of 1907, is surely all that is needed. It shows a specific application of these funds for the purpose of discharging the liability of the Dispensary Board which arose

out of the dealings under the Act creating and authorizing such Board. This is a practical acknowledgement of our position that under the Act of 1907, the receipts of the Dispensary Board were pledged for the payment of its debts for goods purchased, thus creating a trust by implication or operation of law in favor of the creditors.

RIGHT TO BRING MANDAMUS.

It appears in this case, as well as No. 70 preceding, that the amounts due plaintiff in error by the County Dispensaries had been audited by the Dispensary Auditor, and there was nothing left for the County Dispensary Board to do but to pay over these amounts. The only discretion vested in the Board may have been a discretion to pay until the Auditor had checked the accounts, but this having been done, we submit that the Board was under a plain ministerial duty to pay the money, and mandamus would lie. This being true, it shows a right in the plaintiff in error, at least a remedy under the contract, of which plaintiff in error was deprived by defendants claiming to act as State officers, by virtue of the void judgment of the Commission of November 17th, 1909, under the void Act of 1910.

SPECIFICATION SECOND.

The proposition here contended for has become so well settled as to require little discussion. *U. S. vs. Lee*, 106 U. S., 196, 27 L. Ed., 179; *Poindexter vs. Greenhow*, 114 U. S., 207, 29 L. Ed., 192; *Ex Parte Tyler*, 149 U. S., 190, 37 L. Ed., 698. If the over-judgment of the Commission of November 17th, 1909, was invalid, as we have attempted to show, and if the Act of 1910 was unconstitutional, as we have attempted to show, then the legal authority which the defendants advance to justify their acts furnish no color of protection, and the defendants were fully responsible to the plaintiff individually.

SPECIFICATION THIRD.

The District Court fell into an error in deciding that there was a difference between the plaintiff's rights in the moneys due on February 23rd, 1910 (the date of the passage of the Act of 1910), and plaintiff's rights in the moneys which became due subsequently. Referring to the Act of 1910 (Appendix H), the Court will immediately see that the only authority it endeavored to confer on the Commission as against the plaintiff in error was based upon the prior over-judgment of the Commission of November 17th, 1909. Section 6 of the Act is the one that endeavors to revive the prior judgment of the Commission and to authorize, by virtue of such revival, the confiscation of moneys then due by the County Dispensaries to plaintiff in error. There had never been any proceedings of any character instituted against plaintiff in error before the Commission, after the judgment of November 17th, 1909.

The statement of the Supreme Court of South Carolina, in its opinion in No. 70, is as follows: "About the same time, notice was served on the plaintiff, pursuant to the provisions of the Act, that the Commission would proceed to pass upon, fix and determine the claim of the State on account of the overcharges growing out of its dealings with the Dispensary" (R. 70, p. 66) is entirely incorrect in fact, and there is nothing in the record to justify such conclusion. In fact, no such notice was ever served on plaintiff in error and no proceedings of any kind were had.

The result is that the only finding or judgment of the Commission which Section 6 of the Act of 1910 attempted to affect was the so-called over-judgment of November 17th, 1909, which even the Supreme Court of South Carolina held to be void, except for the purpose of confiscating the moneys due plaintiff in error. If this judgment was null and void, then plaintiff in error was entitled to deal with the County Dispensaries, even after the Act of 1910, upon the assumption that the moneys due it as a result of such dealings could not be interfered with until there had been some valid finding or judgment against it, and the prop-

erty rights acquired by it could not be confiscated in the absence of some valid judgment, rendered in a proceeding according to due process of law, based on the alleged claims of the State on account of the fraud and deceit of plaintiff in error in the settlement of its claims arising prior to 1906; and we submit that there is no distinction to be made between the moneys due plaintiff prior to February 23rd, 1910, and those due subsequently. A judgment that is void because not obtained according to the requirements of due process of law cannot be subsequently revived or given life by legislative fiat.

JURISDICTION OF THIS COURT.

AUTHORITIES CITED.

Weston vs. The City Council of Charleston, 2 Peters, 449, 7 L. Ed., 481.
Upshur Co. vs. Myers, 135 U. S., 467, 34 L. Ed., 196.
Haebler vs. Myers, 132 N. Y., 363, 366, 30 N. E., 963, 28 Am. St. Rep., 589, 15 L. R. A., 588.
Hartman vs. Greenhow, 102 U. S. (12 Otto), 672, 26 L. Ed., 271.
Union and Planters Bank vs. Memphis, 189 U. S., 71, 47 L. Ed., 712.
Loeb vs. Columbia Township, 179 U. S., 472, 45 L. Ed., 280.
American Sugar Refining Company vs. New Orleans, 181 U. S. 277, 45 L. Ed., 859.

No. 85.

(No. 408, October Term, 1913.)

This suit was carried to the Supreme Court of South Carolina under Section 11 of the Act of 1908 (Appendix

G), which provided that any corporation "presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court, as in cases at law." There can be no contention to the effect that the Supreme Court is not the highest court of South Carolina, nor can there be any contention that the judgment of such Court in this suit is not a final judgment. Under the construction given to the words "any suit" by this Court in *Weston vs. The City Council of Charleston*, 2 Peters, 449, 7 L. Ed., 481; *Upshur Co. vs. Rich.*, 135 U. S., 467, 24 L. Ed., 196, it is equally clear that this was a suit in the highest court and is properly brought to this Court on writ of error. We submit that this Court, having jurisdiction to reverse, modify or affirm the judgment or decree of the State Court, has ample power and authority to grant the prayer for reversal in this case, and that a judgment should be entered in favor of plaintiff in error reversing the judgment of the Supreme Court of South Carolina in so far as it affirms the so-called over-judgment of the Commission of November 17th, 1909, and this Court should adjudge the validity of plaintiff's claim for \$23,013.75.

If the contention be advanced that this money has gone into the Treasury of the State and has been used for the benefit of the State, and if it be urged that for this reason the judgment of this Court cannot correct the injustice done plaintiff in error, the answer to such a proposition is equally apparent. The State being a party must respond to the judgment of this Court, and, if such a thing is necessary, this Court, as an incident to its appellate jurisdiction, has the right to order restitution. *Haebler vs. Myers*, 132 N. Y., 363, 366, 30 N. E., 963, 28 Am. St. Rep., 589, 15 L. R. A., 588.

No. 70.

(No. 391, October Term, 1913.)

This suit was originated in the Supreme Court of South Carolina under Section 4 of Article V of the Constitution

of 1895, providing that "The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus and other original and remedial writs," and under Section 11 of the Code of Civil Procedure of South Carolina, 1902, which contains an identical provision. The mere fact that the suit was instituted in the original jurisdiction of the Supreme Court does not make it any the less a suit within the meaning of Section 709. *Hartman vs. Greenhow*, 102 U. S. (12 Otto), 672, 26 L. Ed. 271. We submit, therefore, that the Court has jurisdiction to reverse this judgment, and the fact that, pending the writ of error, the defendants have proceeded to confiscate the money of plaintiff in error, is only a reason why this Court should, as an incident to its judgment of reversal, order the restitution of this property.

Nos. 569 AND 570.

We here rely upon *Union and Planters Bank vs. Memphis*, 189 U. S., 71, 47 L. Ed., 712, to establish our position that the case is one that should have been brought direct to this Court on writ of error to the District Court, and that the Circuit Court of Appeals was without jurisdiction, and, consequently, its judgment a nullity because of the exclusive jurisdiction of this Court—and, further, that the taking of the case on writ of error to the Circuit Court of Appeals does not amount to a waiver of the right to have the case brought here on writ of error. This point is made in No. 569 by assignment of error number three. (R., p. 11).

Section 5 of the judiciary Act of March 3rd, 1891, provides that writs of error may be taken from a District Court direct to this Court: (Subdivision 1) "In any case in which the jurisdiction of the Court is in issue; . . ." (Subdivision 4) "In any case that involves the construction or application of the Constitution of the United States," and (Subdivision 6) "In any case in which the

Constitution or law of a State is claimed to be in contravention of the Constitution of the United States." The jurisdiction of the District Court was originally invoked upon the ground that the construction or application of the Constitution of the United States was involved and the further ground that the Acts of 1907, 1908 and 1910, and the authority exercised by defendants under such Acts, was in contravention of the Constitution of the United States, thus coming clearly within subdivisions four and six of Section 5. There was no diversity of citizenship in the case.

It is true that if the District Court first acquired jurisdiction upon the grounds of diversity of citizenship and the Federal question afterwards comes into the case, say by way of answer, then the case is one which could be brought either direct to this Court or could be carried to the Circuit Court of Appeals. If the latter course were pursued, the Circuit Court of Appeals would have jurisdiction under Section 6 of the Act of 1891 and its judgment would be final, although it might certify the constitutional or federal question to this Court.

In a case, however, in which the jurisdiction of the District Court is first invoked upon a Federal question, that is, where it appears on the record from plaintiff's own statement in legal and logical form by good pleading, that the case is one which really and substantially claims that the Constitution or laws of the State are in contravention of the Constitution of the United States, or really and substantially involves the construction or application of the Constitution of the United States, then the case must be brought direct to this Court under Section 5, and the appellate jurisdiction of this Court is exclusive. *Loeb vs. Columbia Township*, 179 U. S., 472, 45 L. Ed., 280; *American Sugar Refining Company vs. New Orleans*, 181 U. S., 277, 45 L. Ed., 859; *Union and Planters Bank vs. Memphis*, 189 U. S., 71, 47 L. Ed., 712. The case last above cited is

exactly similar to ours, and we have followed the procedure approved by the Court in that case.

Respectfully submitted,
J-B. S. LYLES,
Attorney for Plaintiff in Error.

APPENDIX.

STATUTES AND RESOLUTIONS OF SOUTH CAROLINA RELEVANT TO THE QUESTION HERE PRESENTED.

A.

23 STATS. OF S. C., PAGE 436.

ACT OF 1900 AMENDING STATE DISPENSARY LAW. (Title Omitted.)

Section 1 provides that the Acts of 1896 and 1897 "be amended as hereinafter set forth."

Section 2. That the State Board of Control is hereby abolished.

Section 3. A Board consisting of three members, to be known as the Board of Directors of the State Dispensary, is hereby established, whose duties and powers shall be hereinafter defined. The members of said Board shall be men of good moral character, not addicted to the use of intoxicating liquors as a beverage, and shall be elected by the General Assembly in joint session as follows: The Chairman of the Board shall be first elected, and then shall be elected the two remaining members. The term of office of the members of said Board shall be for two years, unless sooner removed by the Governor; they shall qualify and be commissioned in the same manner as other State officers. In the event of a vacancy on said Board by death, resignation or otherwise, such vacancy shall be filled by appoint-

ment by the Governor, until the next session of the General Assembly, when an election shall be held to fill said vacancy for the unexpired term. Each member of the said Board shall receive for his services the same per diem and mileage allowed to members of the General Assembly: *Provided*, That no member shall receive per diem for more than one hundred days in any fiscal year. The said Board shall devise such a system of bookkeeping and accounting as it may deem advisable. The said Board shall prescribe all rules and regulations, not inconsistent with law, for the government of the State Dispensary and the County Dispensaries. The General Assembly shall, at the present session, upon the approval of this Act, elect the members of said Board, as provided for in this section: *Provided*, That no member of this Board of Directors, while holding this office, shall become a candidate for any other office.

Section 4. A Dispensary Commissioner shall be elected by the General Assembly, who shall hold his office for the term of two years, and until his successor shall be elected and qualified, and who shall receive an annual salary of three thousand dollars, to be paid as now provided by law. The Governor shall have the right at any time to suspend the said Commissioner for any cause which he shall consider sufficient until the next meeting of the General Assembly, and appoint some suitable person to fill such vacancy during said suspension. In case of the removal of said Commissioner by the Governor, he shall, on the first day of the next meeting of the Legislature, make a report to said General Assembly, stating his reason for his action, which action, if approved by the General Assembly, shall operate as a removal, and the General Assembly shall elect a successor to said Commissioner. In case of death, suspension or other disability of the Commissioner, the Governor shall have the right to appoint a successor to fill said vacancy until the next meeting of the General Assembly. Said Directors of the Dispensary, shall, within thirty days after the approval of this Act by the Governor, and there-

after quarterly, advertise in two or more daily newspapers of this State, and one or more daily newspapers published without this State, for bids to be made by parties desiring to furnish liquor to the Dispensary for said quarter. Said bids shall be placed in an envelope, securely sealed with the seal of the company, firm or corporation, and having been so sealed, shall be placed in the express office, directed to the State Treasurer, Columbia, S. C., and only one bid shall be made by any one, which shall state the quality, price and chemical analysis thereof, and accompanying said bids there shall be a sample of each kind of liquor offered for sale, containing not more than one-half pint each, which sample shall, on its arrival, be delivered to the Dispensary Commissioner, to be retained by him until after it has been ascertained that the wines or liquors purchased correspond in all respects with that purchased; said samples to be the property of the State. Said bids shall be kept by the State Treasurer in his office, and he shall not himself, or allow any one to inspect said bids, or the envelopes containing said bids, but shall deliver said bids to the Directors of the Dispensary, at a meeting of the Board of Directors, who shall open said bids in public, and record all said bids in a book kept for that purpose. Said Directors of the Dispensary may reject any and all bids, and readvertise for other bids. Said Directors of the Dispensary shall purchase all alcoholic liquors for lawful use in this State, and shall have the same tested and declared to be chemically pure; and if the wines and liquors purchased fail to correspond in any respect with the samples furnished, the seller thereof shall forfeit to the State a sum not exceeding the value of said liquor, to be recovered in an action brought by the State against such seller; and said contract shall be awarded to the lowest responsible bidder, for such quantities and kinds of liquors as may be deemed necessary to the Dispensary for the quarter, and said contracts shall further provide that the Directors of the Dispensary may order additional quantities of liquors sufficient to supply the Dispensary, should there be need of

more, from the same persons or corporations, at the same price, for that quarter. Said Directors shall require from the successful bidder or bidders such bond, in such sum as they may deem necessary, to insure the compliance of said bidder or bidders with the terms of said contract: *Provided*, That the said Directors of the Dispensary shall not purchase any liquor of any person, firm or corporation, who shall solicit any orders, either by drummer, agents, samples or otherwise, except as hereinbefore provided. The fiscal year of the transactions of the State Dispensary shall end on the 30th day of November of each year. The Governor of the State shall appoint, not later than the 15th day of December in each year, two (2) expert accountants, of good character and of high standing in their profession, who shall make a thorough examination of the books of account, trial balances and balance sheet of the Dispensary for the year ending November 30th, together with all bills, vouchers and any and all evidences of receipt and expenditures whatsoever, and they shall certify to the General Assembly, in writing, at the beginning of the regular session in January of each year, the result of such examination. This certificate to be in addition to the annual report of the Board of Directors. The accountants so named by the Governor of the State each shall receive for his services (\$4) four dollars per day, for not exceeding thirty days in any one year, to be paid from the earnings of the Dispensary. The Commissioner and the members of the Board of Directors are hereby directed and commanded to give to the accountants appointed by the Governor free and full access to all books of accounts, trial balances, balance sheets, and every and all books, invoices, receipts, bank books, and every and all papers connected with the financial operations of the Dispensary: *Provided, further*, That nothing herein contained shall prevent said Directors of the Dispensary from making with distillers in this State contracts for the purchase of liquors manufactured by them within the State.

Sec. 5. The Dispensary Commissioner shall, before entering upon the duties of his office, execute a bond to the State of South Carolina in the sum of seventy-five thousand dollars, which bond shall be approved by the Attorney General of the State, according to the provisions of the law as now provided, or which may be hereinafter enacted, and for the faithful observance of all rules and regulations made and adopted by the Directors of the Dispensary during his term of office; said Commissioner shall be charged with the management and control of the State Dispensary, subject to the rules and regulations of said Directors of the Dispensary and the provisions of the Dispensary Law; said Commissioner shall enter into contracts, employ all assistants and help necessary to manage the State Dispensary, at salaries not to exceed those fixed by the Directors of the Dispensary; said Commissioner may discharge any of the employees at pleasure, and report his reasons therefor in writing to the Directors of the Dispensary: *Provided*, That said Dispensary Commissioner shall not employ any person who is related to him or any member of the Directors of the Dispensary by blood or marriage within the sixth degree: *Provided, further*, That the liquor sold to the County Dispensary shall be sold at a profit of not over ten per cent. of the cost to the State.

Sec. 9. The State Board of Control, shall, within ten days after the approval of this Act, on demand, deliver to the said Directors of the Dispensary, all books, accounts and property, of every nature and kind whatsoever.

Sec. 12. This Act shall go into effect immediately upon its approval by the Governor.

Approved the 13th day of February, A. D. 1900.

B.**RESOLUTION OF 1905 TO INVESTIGATE DISPENSARY.****24 STATUTES OF S. C., PAGE 1220.****A CONCURRENT RESOLUTION
To Investigate the State Dispensary.**

Be it Resolved by the Senate, the House of Representatives concurring:

Section 1. That a Joint Committee, consisting of three Senators and four Members of the House of Representatives, be appointed by the presiding officers of the respective Houses to investigate the affairs of the State Dispensary.

Sec. 2. That said Committee be, and is hereby, empowered to send for papers and persons, to swear witnesses, to require the attendance of any parties whose presence shall be deemed necessary, to appoint an expert accountant and stenographer, and to investigate all transactions concerning said Dispensary and its management, and to make testimony either within or without the State, and shall have access at all times during their service to all the books and vouchers and other papers of said institution, especially in investigating the following facts:

- (a) Whether or not it is a fact that houses represented by agents who are near relatives of the members of the Board of Directors, receive large orders at each purchase.
- (b) Is it a fact that members of the Board of Directors are, or have been, agents for certain wholesale houses from which large purchases are made?
- (c) Is it a fact that parties to whom large orders are given are not wholesale dealers, but brokers, and that the orders are filled by third persons, thus making the State pay the commissions of the middleman?
- (d) Was it necessary to purchase the large quantity of liquors ordered in December, 1904, to fill demands, and

especially the new and fancy goods purchased, which is unknown to the trade?

(e) Are the extraordinary heavy purchases made necessary to the best business interest of the Dispensary system?

(f) What is the financial standing of the business, and is it run on the best principles for the interest of the law as originally passed and amended?

(g) Is it a fact that the State, through the Dispensaries, is violating the Constitution of 1895, in that it is selling whiskey in less quantities than one-half of one pint?

(h) Is it a fact that the State is selling 5's in case goods to its customers and charging them for one quart?

(i) Is it a fact that certain agents are traveling over the State and offering special inducements to County Dispensers to "push" certain brands of liquors, and if so, is it a fact known to the members of the State Board of Directors?

(j) Is it a fact that certain requirements of the law are dispensed with by the County Dispensers by order of, or by the consent of, the members of the State Board of Directors?

(k) Has the whiskey which has been recently purchased been ordered out from the dealer, or is it held in reserve for future delivery?

(l) What is the indebtedness of the Dispensary for liquors which have been bought but not delivered?

(m) And any and all other matters relating to the management of the State Dispensary, and of any official or person in relation thereto.

(n) Is it, or not, a fact that excessive freights have been paid to railroads for transporting liquors into the State, when said liquors could have been shipped into the State by water at less cost to the State?

(nn) Whether there is any warrant of law or authority for the establishment and conduct of what is commonly known as "beer dispensaries," as they are now and have been conducted?

Sec. 3. That said Committee may at any time they may deem it advisable call to their assistance any of the State officers or employees of the State Dispensary, whose duty it shall be to render the said Committee any reasonable service that may be required of them within the scope of its functions as prescribed by these Resolutions.

Sec. 4. That the said Committee shall convene as soon after the adjournment of this session of the General Assembly as practical, and shall organize by electing one of their number as Chairman, and shall report its findings to the next session of the General Assembly. That said Committee shall receive the same per diem and mileage as members of the General Assembly, and that the sessions of said Committee be open to the public.

Sec. 5. That nothing herein contained shall be construed to deny the same Committee power to apply at any time to the General Assembly for such other power and authority as the circumstances arising during this investigation may seem to require.

Sec. 6. That said Committee shall have the right to punish for contempt as Courts of Common Pleas and General Sessions.

Sec. 7. That said Committee shall have a Marshal to serve its processes and keep order at its sessions, and his pay shall be fixed by said Committee. The pay of the witnesses shall be the same as that of witnesses in the Court of Common Pleas for Richland County, and all expenses shall be paid on the warrant of the Chairman of said Committee by the Liquor Commissioner out of the general Dispensary fund and charged as Dispensary expenses.

Sec. 8. That said Committee be, and is hereby, empowered to send for papers and persons, to swear witnesses, to require the attendance of any parties whose presence shall be deemed necessary, to employ expert accountants and stenographers and any other person or persons the Committee may consider necessary in the ascertainment of any fact or facts pertinent to this inquiry; and said Committee is hereby authorized and empowered to investigate and in-

quire into all transactions connected with said State Dispensary and its management or control at any time in the present or past, and to investigate any and all purchases, sales, shipments, contracts, or other like transactions; and the personal connection, if any, of any member or members of the State Board of Control, or the State Liquor Commissioner, or any other citizen or official of this State, in the present or past, with any corporation, concern or individual contracting with or supplying any spirituous or intoxicating liquors, or other goods or commodities to said Board or Commissioner, or to the State, to take testimony either within or without the State; and to have access to all the books and vouchers and other papers of said institution or of any officer or employee thereof.

Sec. 9. That the costs and expenses of this investigation be paid by the State Dispensary, each member of said Commission to receive \$4.00 per day and the usual mileage.

C.

ACT OF 1906 IN RE DISPENSARY INVESTIGATING COMMITTEE.

24 STATUTES OF SOUTH CAROLINA, PAGE 334.
 AN ACT TO PROVIDE FOR THE INVESTIGATION OF THE DISPENSARY.

Whereas, a Committee has been appointed to investigate the State Dispensary under the Concurrent Resolution of the General Assembly, dated the 31st day of January, 1905; and whereas, in the progress of the work of the said Committee some doubt has arisen as to the power of said Committee in the discharge of their duties; and it being provided in Section 5 of said Concurrent Resolution that the said Committee should apply to the General Assembly for such other power and authority as the circumstances arising during this investigation may seem to require; therefore,

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the Committee heretofore appointed under the terms of the Concurrent Resolution, dated the 31st day of January, 1905, or any other Committee or Committees that may be appointed, are hereby authorized and empowered to elect a Marshal, who, upon being sworn, shall be and become a peace officer of the State and invested with all the power of Sheriffs and Constables in the service of any and all process issued by the Committee aforesaid, and with the power to arrest and imprison upon the order of the said Committee any and all persons who shall fail and refuse to obey any legal order of the said Committee, and who shall be guilty of any disorderly conduct in the presence of said Committee during any session thereof, or who shall be guilty of any contempt of the said Committee.

Sec. 2. The said Committee be, and are hereby, authorized and empowered to call before them by summons or notice, in such form as the Committee may adopt, and to be served by the Marshal of said Committee, or such other officer of the State as may be by the Committee required, such person or persons as the Committee deem proper, and to require such person or persons to answer, upon oath, any and all questions that the Committee may deem relevant and may propound him or them; and upon the failure or refusal of such person or persons to obey such summons or notice, or to answer such question or questions, such person or persons shall be deemed to be in contempt of the authority of said Committee, and may be imprisoned upon the order of the said Committee in the common jail, to be there held until he or they shall comply with the order of the said Committee: *Provided*, That no testimony given by said witness shall be used against them in a criminal prosecution.

Sec. 3. The said Committee be, and the same is hereby, authorized to send for and to require the production of any and all books, papers, or other documents or writings which may be deemed relevant to any investigation, and to

require said person or persons in custody or possession of said papers to produce the same before the said Committee, and any person or persons who shall fail or refuse to act on the order or notice of said Committee to produce said books, papers, or other documents, or writings, shall be deemed guilty of contempt of said Committee and shall be punished as provided in Section 2.

Sec. 4. Said Committee shall have power to administer necessary oaths, and any person who shall, after being sworn before said Committee, swear falsely, shall be deemed guilty of perjury, and, upon conviction, shall be punished as provided by law.

Sec. 5. That said Committee be, and they are hereby, authorized and directed to order the Commissioner of the State Dispensary to withhold the payment of any claims against the State Dispensary or any officer thereof, or the claims of any creditor against said State Dispensary or any of its officers, which they may deem advisable, until same is duly approved by the production of the books of original entry, and all documents and correspondence relating to all their transactions with the State Dispensary, and to require the person or persons in custody or possession of said books, documents, papers and correspondence to produce the same before the said Committee in person, and when such proof had been submitted to and approved by the said Committee, and the State Treasurer is hereby forbidden to pay such claims upon written notice from the Chairman of said Committee.

Sec. 6. This Act shall take effect and be of force immediately upon its approval by the Governor.

Approved the 24th day of January, A. D. 1906.

D.**RESOLUTION OF 1906 CANCELLING CONTRACTS
WITH CAROLINA GLASS COMPANY.**

“Be it Resolved, by the House of Representatives, the Senate concurring:

“Section 1. That the State Board of Directors of the State Dispensary be, and it is hereby, required to withdraw from the Carolina Glass Company, all orders, contracts and awards for glass now outstanding, except so much as may be necessary for not more than sixty days' use, and that bids be reopened, advertisements made and notices sent to all glass dealers, heretofore doing business with the Dispensary, and to all other known glass dealers or glass manufacturers setting forth the amount, kind and quality of glass to be bought or bid upon; that such bidding and awards thereupon shall be had quarterly and purchases shall be made for only one quarter at a time, and shall be conducted, as far as may be practicable, as is now or may hereafter be provided by law for the purchase of liquors and wines.

“Section 2. That the Dispensary Investigating Committee be required to employ an expert accountant or accountants to check up the accounts with the Carolina Glass Company, and that such other person or persons be employed as may be necessary to aid in checking up said accounts and examining said contracts and orders.

“The Concurrent Resolution was agreed to and was ordered sent to the Senate.”

E.

ACT OF 1907.—COUNTY DISPENSARIES ESTABLISHED AND STATE DISPENSARY ABOLISHED.

25 STATUTES OF SOUTH CAROLINA, PAGE 463.

AN ACT TO DECLARE THE LAW IN REFERENCE TO AND REGULATE THE MANUFACTURE, SALE, USE, CONSUMPTION, POSSESSION, TRANSPORTATION AND DISPOSITION OF ALCOHOLIC LIQUORS AND BEVERAGES WITHIN THE STATE, AND TO POLICE THE SAME.

Section 1 forbids the manufacture, sale, etc., of all alcoholic liquors and beverages under a penalty of imprisonment or fine; "except in incorporated cities or towns of this State, in Counties wherein the same may be permitted as hereinafter provided."

Section 2 provides for the determination by a special election in each County of the question whether liquors and beverages may be sold in any County, and also of "the question whether one-third of the license fees and Dispensary profits, as hereinafter provided for, shall be paid to the County Treasurer, to be applied to the County school fund or to roads and bridges. Such election to be ordered by the County Supervisor of such County upon the filing with him of a petition signed by one-fourth of the qualified electors of the County, the election to be conducted according to certain regulations specified."

Section 3 prescribes the manner in which the ballots are to be taken and the election determined.

Section 4. If a majority of the ballots cast in such election be "For Sale," it shall be lawful for such liquors and beverages to be sold in said County as hereinafter provided until the result of such election be reversed by a subsequent election.

Section 5. If the sale of alcoholic liquors and beverages be authorized by such election, the Governor, upon recom-

mendation of the County Board of Education of such County, if the result of the election as to application of profits be in favor of County School Fund, or the County Board of Commissioners, if such result be in favor of Roads and Bridges, the Mayor or Intendant of the city or town within which a Dispensary may be located, and the Senator and Members of the House of Representatives of such County shall appoint three qualified electors of the County, who shall be known as "County Dispensary Board," and whose term of office shall be two years, subject to removal by the Governor for cause. One member of the Board shall be recommended by each of the bodies above named, which shall also have the power to fill any vacancy, a majority thereof in each instance controlling. If there be more than one city or town in such County within which a Dispensary may be located, then, and in such case, a majority of the Mayors or Intendants of such cities and towns shall control in their recommendation; and if there should be a failure on their part for any reason to agree, then the appointment of the member to be recommended by them shall be made by the delegation: *Provided*, That in the Counties of Dorchester, Berkeley, Fairfield, Orangeburg, Union, Newberry, Kershaw, Lee, Marion, Lexington, Barnwell, Marlboro, Sumter and Oconee, said Board shall be appointed upon the recommendation of the Members of the General Assembly from said Counties, or a majority of the respective delegation; except in the County of Abbeville, where one member shall be recommended by the City Council of Abbeville and two by the delegation in the General Assembly; in the County of Aiken, where one member shall be recommended by the City Council of Aiken and two members by the delegation in the General Assembly; in the County of Chesterfield, where one member shall be recommended by the County Treasurer, the County Superintendent of Education and the County Supervisor, one member by the Town Council of the Town of Cheraw, and one member by the delegation in the General Assembly; in the County of Georgetown, where one mem-

ber shall be recommended by the City Council of Georgetown, one member by the County Board of Education and one member by the delegation in the General Assembly; in the County of Lancaster, where one member shall be recommended by the Town Council of Lancaster and two members by the delegation in the General Assembly. Each member of the Board shall, before entering upon his duties, enter into a good and sufficient bond in the sum of five thousand dollars with a surety company, the fee therefor to be paid out of the profits of the Dispensary, in the form prescribed by Section 584, Vol. I, Code of Laws, 1902. The Board shall organize by the election of a Chairman and a Secretary from among their number. Each member of the Board, for his services, shall receive three dollars per day, for not exceeding ten days in each month, and mileage, five cents per mile each way, traveling in the most direct route. Said Board shall have the power, and is hereby required, to make, from time to time, rules and regulations for the government of any Dispensary under its control. The said Board is hereby authorized and required to establish a Dispensary or Dispensaries, as said Board may deem proper, for the sale of alcoholic liquors and beverages as herein provided, and may close any Dispensary so established, except the Dispensary located at the County seat, when in their judgment the public good requires it: *Provided*, That in the County of Abbeville no Dispensary shall ever be located outside the City of Abbeville. The said Board shall elect a Dispenser for each Dispensary, who shall have charge of same, under the supervision of said Board; and who shall hold his position for twelve months, unless removed by the Board in the exercise of its discretion. The said Board may employ such clerks and assistants as may, in their judgment, be necessary, and pay them, including the Dispenser, such salary as the said Board may fix: *Provided*, No salary or compensation shall be regulated or be made dependent upon the amount of sales. Said Dispenser shall give bond in the sum of five thousand dollars in the form prescribed by Section 584, Vol. I, Code of Laws, 1902:

Provided, Said bond shall be given in a surety company, or such personal bond as the law now allows.

Section 6. The members of the said County Dispensary Board are hereby declared to be County officers, and are hereby authorized and empowered, under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: *Provided*, That the State shall not be liable upon any contract for the purchase thereof beyond actual assets of the Dispensary for which the purchase is made. The members of the County Dispensary Board and all Dispensers shall be persons of known moral character and not directly or indirectly applicants for appointment.

Section 7. The said Board shall advertise in two or more daily papers in this State, and one weekly paper of the County, for bids to supply the kinds and quantities of liquor and beer to be bought. Such bids shall be only for the liquor and beer to be furnished during the three months following, and the kinds and quantities shall be designated. The bids shall be sealed and there shall be no sign or mark upon the envelopes indicating the name of the bidder. All bids must be sent by express or by registered mail to the County Treasurer within thirty days after the first advertisement therefor. The County Treasurer shall keep such bids without inspection or permitting inspection of the same until the expiration of said thirty days, when they shall be opened in public by said Board and the contract awarded to the lowest responsible bidder of each kind, the Board reserving the right to reject any bid: *Provided*, No bid shall be opened until at least one week's notice of the time and place thereof shall be given in some newspaper published in the County, and said bid shall then be opened. Said award shall be forthwith published once in a newspaper published in the County. Said published statement shall include the grade of goods purchased, quantity of each grade purchased, from whom purchased, price per gallon, or dozen packages, and the retail price at which the same is to be sold: *Provided, however*, No pur-

chases herein mentioned or contemplated shall be made from any person, firm or corporation residing without the limits of this State, having a resident or permanent representative agent or salesman in this State.

Section 8. It shall be the duty of the said Board to cause an analysis of the liquors in stock to be made by some person competent to determine whether any of said liquors are adulterated or impure, to the end that no impure liquors shall be sold by Dispensaries. If, upon analysis, it shall be determined that such liquors are adulterated or impure, the County Dispensary Board may retain the price thereof from the seller, or if they have been paid for, the said Board shall not allow said liquors to be sold, and may, in the name of the State, institute an action against the seller for the recovery of the amount so paid.

Section 9. The County Dispensary Board shall, during the first week of each month, make a sworn statement of the receipts, expenditures and liabilities of each Dispensary for the preceding month, and cause the same to be published once in some newspaper published in the County during that week.

Section 10. Each Dispenser shall be a qualified elector of this State and a resident of the County in which the Dispensary is located, who has never pleaded guilty or been adjudged guilty of violating any law relating to intoxicating liquors, who is not a keeper of a restaurant or place of public amusement, and is not addicted to the use of intoxicating liquors as a beverage.

Section 11. Each Dispenser shall daily deposit, to the credit of the County Board, in a bank designated by the Board, all monies received by him from sales.

Section 13. All sales shall be for cash and at a profit to be determined by the Board.

Section 18. On the first days of January, April, July and October in every year, the County Dispensary Board shall file with the Clerk of Court a sworn statement of the

profits of each Dispensary in the County for the three months preceding said dates, respectively, which shall be recorded by him in a book kept for that purpose, and published forthwith by said Board once in a newspaper published within the County. The Board shall file a copy thereof with each of the following officers: The County Treasurer, the County Supervisor, and the County Superintendent of Education, and the Mayor or Intendant of any city or town within which a Dispensary may be located; and upon the said days shall divide the profits into three equal parts —one-third to be paid to the County Treasurer for ordinary County expenses; one-third to be paid to the County Treasurer for County School Fund, or for roads and bridges, as may be determined by the election provided for in Section 3 of this Act, and one-third to the Treasurer of the municipality in which said Dispensary is located for ordinary expenses.

[Here follow certain exceptions covering the division of profits in certain counties.]

Section 34. In any County in this State in which the Dispensary has not been voted out by and under ~~existing~~ law, and until an election is held in such County, as provided in this Act, any Dispensary now established therein shall be continued as a Dispensary in said County under this Act. There shall be appointed by the Governor, as soon after the approval of this Act as practicable, a County Dispensary Board in such County in the same manner as is provided hereinbefore for appointment of such Boards, whose duties and authority shall be the same as hereinbefore provided for such Boards; said Board is authorized to purchase from the proper State authorities the stock on hand, or so much thereof as may be necessary. The profits arising from the operation of such Dispensaries shall be divided as follows: One-third to be paid to the County Treasurer for ordinary County expenses; one-third to the County Treasurer for the County School Fund; and one-third to the Treasurer of the municipality in which said Dispensary is located for ordinary expenses; except that

in the Counties for which special provision is made in Section 18 of this Act for the division of profits they shall be divided as provided therein.

Section 35. In the event that a Dispensary be established under the provisions of this Act in any County, and thereafter an election be held hereunder resulting in the disestablishment of the same, the County Dispensary Board in such County shall immediately close the Dispensary therein, dispose of the stock on hand for cash to some other County Dispensary Board, or to purchasers outside of this State, apply the proceeds thereof, with any other assets, to the payment of outstanding obligations, and divide the net proceeds as hereinbefore provided for Dispensary profits.

Section 39. The office of Dispensary Auditor is hereby created. The Governor shall, immediately upon the approval of this Act, appoint a competent person as Dispensary Auditor, to examine from time to time, as herein-after provided, into the affairs of all Dispensaries and liquor manufacturing establishments conducted in this State.

Section 40. It shall be the duty of such Dispensary Auditor to make a thorough examination into all the books, papers and affairs of the said Dispensaries and liquor manufacturing establishments, and in making such examinations he shall have authority to administer oaths and to summon and examine all persons connected with the said Dispensaries and liquor manufacturing establishments. He shall make a full and detailed report of his findings and file the same with the State Treasurer and with the Treasurer of the County in which the Dispensary or liquor establishment may be located. Said examination and report of each Dispensary and establishment shall be made at least once every three months.

Section 41. The term of office of the said Dispensary Auditor shall be four years, and he shall receive as com-

pensation two thousand dollars per annum and all actual expenses incurred by him in the discharge of his duties.

Section 42. The said Dispensary Auditor is hereby authorized to prescribe a system of bookkeeping and accounts for the several County Dispensary Boards, and to enforce observance of the same.

Section 43. All accounts for salary and expenses of the Dispensary Auditor shall be submitted to and approved by the Comptroller General, and he shall apportion the same to and assess the same upon the several Dispensaries in the State according to their gross sales, and the same shall be paid by the several County Dispensary Boards to the State Treasurer, to be paid out by him upon the warrants of the Comptroller General.

Section 44. Any person who may obstruct or interfere with said Dispensary Auditor in the performance of his duties, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars, or both, in the discretion of the Court.

Section 45. If any member of the County Dispensary Board, any Dispenser, Clerk or Assistant in their employ, violate any of the provisions of this Act, he shall be deemed guilty of a misdeameanor and shall be removed from office.

Section 47. The State Dispensary is hereby abolished, and all Acts and parts of Acts inconsistent with this Act are hereby repealed: *Provided*, That this Act shall not have the effect of preventing any violations of the present criminal law relating to the Dispensary being punished as now provided by law for offenses heretofore committed.

Section 48. This Act shall go into effect immediately upon its approval by the Governor.

Approved the 16th day of February, A. D. 1907.

F.

ACT OF 1907 IN RE STATE DISPENSARY COMMISSION.

25 STATUTES OF SOUTH CAROLINA, 835.

AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY CONNECTED WITH THE STATE DISPENSARY, AND TO WIND UP ITS AFFAIRS.

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required in the sum of \$10,000.

Sec. 2. Said Commission shall immediately organize by the election of a Chairman and a Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property of the State Dispensary except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases they are hereby

authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony either within or without this State: *Provided, further,* That all payments shall be made in gold and silver coin of the United States, in United States currency or in national bank notes.

Sec. 4. The compensation of each member of said Commission shall be \$5 per day for each day actually employed about the business, and actual expenses for the time engaged: *Provided,* That they shall receive no compensation for services rendered on this Commission after January 1, 1908.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employes as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor at the earliest day practicable a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of their actings and doings.

Sec. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to Investigate the Affairs of the Dispensary, as prescribed by an Act to Provide for

the Investigation of the Dispensary, approved 24 January, A. D., 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Approved the 16th day of February, 1907.

G.

ACT OF 1908 IN RE STATE DISPENSARY COMMISSION.

25 Stats. S. C., 1289.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY CONNECTED WITH THE STATE DISPENSARY, AND TO WIND UP ITS AFFAIRS," SO AS TO PROVIDE COMPENSATION FOR MEMBERS OF THE SAID COMMISSION FOR THE YEAR 1908, AND TO PROVIDE FOR THE SALE OF THE REAL ESTATS HERETOFORE USED IN CONDUCTING THE DISPENSARY, AND TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS OF THE STATE DISPENSARY.

(This Act amends the Act of 1907 in various particulars, "so that said Act (of 1907), when so amended, shall read as follows.")

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assem-

bly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required in the sum of \$10,000.

Sec. 2. Said Commission shall immediately organize by the election of a Chairman and a Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due, and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition, upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State except to County Dispensary Boards; and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further*, That all payments shall be made in gold and silver coin of the United States, in United States currency, or in national bank notes.

Sec. 4. The compensation of each member of said Commission shall be five (\$5) dollars per day for each day actually employed about the business, and actual expenses for the time engaged: *Provided*, That they shall receive no compensation for services rendered on this Commission after January 1st, 1909: *Provided, further*, That in addi-

tion to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty dollars (\$150): *Provided, further,* That the per diem provided for herein shall begin on the date of the approval of this Act.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor, at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of their actings and doings.

Sec. 8. The said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided,* That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Sec. 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required, upon being notified by the State Dispensary Commission that the real estate heretofore used for the offices and warerooms, etc.,

of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell the same under and pursuant to the terms of Section 91, Code of Laws, South Carolina, Volume I, 1902: *Provided*, That the said property shall not be sold for less than seventy-five thousand dollars (\$75,000), and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same.

Sec. 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland County against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary.

Sec. 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary; and to pay for the State any and all just claims, which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have been or may hereafter be collected by said Dispensary Commission: *Provided*, That each and every person, firm or corporation, presenting a claim or claims to said Commission, shall have the right to appeal to the Supreme Court, as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court.

Sec. 12. That no funds arising from the sale of assets of the former State Dispensary, or from the collection of debts due the said Dispensary, or moneys delivered by the State Treasury to said Commission, shall be paid out for

any purpose, or to any persons whatsoever, except upon the cheque of the Chairman of said Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such cheques as may be presented by the Chairman of said Commission only upon presentation of the same together with a certificate of said Commission, or a majority thereof, which certificate shall show: that the said cheque is issued in payment of some expense provided for by statute; or, necessarily incident to closing up the affairs of the Dispensary; or, for services rendered said Commission in closing up the affairs of said Dispensary; or, contracted for in accordance with law by said State Dispensary Commission; or, that it is in payment of a claim of a creditor which has been adjudged by said Commission to be due and upon such adjudication ordered paid.

Approved the 24th day of February, A. D. 1908.

H.

ACT OF 1910 FURTHER IN RE STATE DISPENSARY COMMISSION.

26 STATUTES OF S. C., PAGE 876.

AN ACT TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS OF THE STATE DISPENSARY.

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the State Dispensary Commission is hereby authorized and empowered, in addition to the powers heretofore conferred upon it, to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations heretofore doing business with the State Dispensary, and to fully investigate transactions by any and all persons, firms or corporations with the State Dispensary, and to make settlement of

all claims in favor of the State against any such persons, firms or corporations, and collect and receipt for the same.

Sec. 2. For the purpose of carrying out the provisions of this Act, the State Dispensary Commission shall have all the powers and privileges conferred upon it by any and all previous Acts and amendments thereto.

Sec. 3. Any finding of the State Dispensary Commission under the provisions of this Act shall be final, and upon such finding the Dispensary Auditor shall deduct the amount, or amounts, so found to be due and owing the State from any sum or sums that may be found to be due and owing by any County Dispensary to any such person, firm or corporation found by the State Dispensary Commission to be indebted to the State, and each and every County Dispensary Board, and other officer in charge of County Dispensary funds or assets arising from the sale of property belonging to a County Dispensary, or Dispensaries, shall, before paying any such person, firm or corporation so found to be owing the State, any sum or sums of money whatsoever, turn over to the State Dispensary Commission a sufficient sum of money, or so much as may be on hand, to pay the debts due the State, any balance remaining to be applicable to any just claim of such creditor against a County Dispensary. A receipt of the State Dispensary Commission shall be a sufficient voucher for the payment of any funds found to be due the State.

Sec. 4. That the State Dispensary Commission is hereby authorized and empowered to order any officer or officers in charge or custody of any fund or funds arising from the sale of any assets belonging to any former County Dispensary, or of any assets belonging to any existing County Dispensary, to withhold payment of the same until the further order of the State Dispensary Commission to pay out any such fund until so permitted by the said Commission.

Sec. 5. In case any person, firm or corporation shall fail or refuse when required by the State Dispensary Commission to produce any book, paper, document, or witness, or shall refuse to submit to the authority or jurisdiction of

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the said State Dispensary Commission, such person, firm or corporation shall be deemed to have abandoned its claim or claims against all County Dispensaries, and the amount of such abandoned claim shall be turned over to the State Dispensary Commission as an asset of the State Dispensary: *Provided*, All persons, firms or corporations shall have not less than ten days' notice of any hearing of any and all claims, and shall have full opportunity to be heard in their own behalf: *Provided, further*, The Attorney General, or other attorney for the State, shall file with the State Dispensary Commission a statement showing the amount claimed to be due by each such person, firm or corporation to the State, and a copy of such claim shall be mailed to the address of such person, firm or corporation not less than ten days before the date fixed for hearing thereon.

Sec. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing, and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all County Dispensaries heretofore existing, shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State.

Sec. 7. The State Dispensary Commission is hereby empowered to pass all orders and judgments and do any and all things necessary to carry out the purposes of this Act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this State, and a transcript of said judgment shall be filed in the office of the Clerk of the Court of Common Pleas in each County where any property of such judgment debtor is situated.

Sec. 8. In all cases where any conflict may arise between the provisions of this Act and any other Act or Acts of the

General Assembly, concerning or regulating any of the matters covered by this Act, the provisions of this Act shall control.

Sec. 9. In all cases pending before the said State Dispensary Commission, upon any claim or claims against any person or persons or any corporation or corporations owning any real estate in any County in this State, the said Commission shall file in the office of the Clerk of the Court in each County where such real estate is situated a notice of the pendency of such cases, and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State.

Sec. 10. This Act shall take effect immediately upon its approval by the Governor.

Approved the 23d day of February, A. D. 1910.



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Supreme Court of the United States

OCTOBER TERM, 1914

No. 709

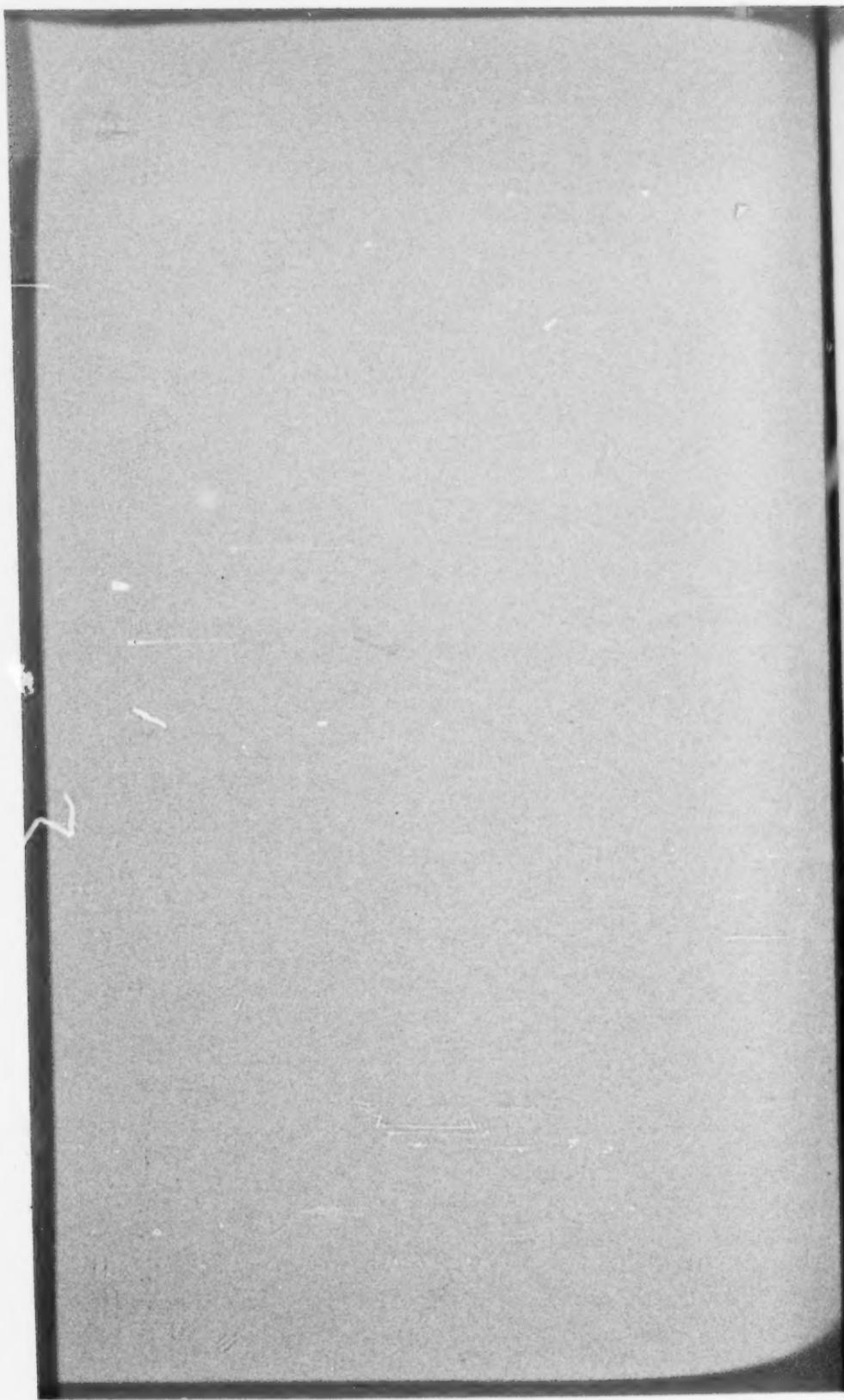
CAROLINA GLASS COMPANY, *Plaintiff in Error*,

vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN,
et al., CONSTITUTING THE STATE DISPENSARY
COMMISSION, et al.

In Error to the Supreme Court of the State of South Carolina.

ARGUMENT OF THOMAS H. PEEPLES AND BENJAMIN LINDSEY ABNEY,
FOR DEFENDANTS IN ERROR.



Supreme Court of the United States

OCTOBER TERM, 1914

No. 70

CAROLINA GLASS COMPANY, *Plaintiff in Error*,

vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN,
et al., CONSTITUTING THE STATE DISPENSARY
COMMISSION, et al.

In Error to the Supreme Court of the State of South Carolina.

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Supreme Court of the United States

OCTOBER TERM, 1914.

No. 70.

THE CAROLINA GLASS COMPANY, *Plaintiff in Error*,
vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN,
et al., CONSTITUTING THE STATE DISPENSARY
COMMISSION, et al.

Argument of Thomas H. Peeples and Benjamin Lindsey Abney,
for Defendants in Error.

STATEMENT OF CASE.

The defendants in error composed the State Dispensary Commission, created under an Act of the General Assembly of the State of South Carolina, entitled "An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs," approved the 16th day of February, 1907 (XXV Stats., 835). This Act was subsequently amended by an Act entitled "An Act to amend an Act entitled 'An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs,' so as to provide compensation for members of the said Commission for the year 1908, and to provide for the sale of the real estate heretofore used in conducting the Dispensary, and to further provide for winding up the affairs of the State Dispensary," approved the 24th day of February, 1908 (XXV Stats., 1289).

By Section 3 of the original Act it was the duty of the Commission to close out the entire business and property of the State Dispensary, except the real estate, and including stock in the several county Dispensaries by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. * * *

By Section 8 said Commission was given "full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission."

By Section 11 of the amendatory Act, said Commission was declared "to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary; and to pay for the State any and all just claims, which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have been or may hereafter be collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation, presenting a claim or claims to said Commission, shall have the right to appeal to the Supreme Court, as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court."

By Section 12, "no funds arising from the sale of assets of the former State Dispensary, or from the collection of debts due the said Dispensary, or moneys delivered by the State Treasury to said Commission, shall be paid out for any purpose, or to any persons whatsoever, except upon the cheque of the Chairman of said

Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such cheques as may be presented by the Chairman of said Commission only upon presentation of the same together with a certificate of said Commission, or a majority thereof, which certificate shall show: that the said cheque is issued in payment of some expense provided for by statute; or, necessarily incident to closing up the affairs of the Dispensary; or, for services rendered said Commission in closing up the affairs of said Dispensary; or, contracted for in accordance with law by said State Dispensary Commission; or, that it is in payment of a claim of a creditor which has been adjudged by said Commission to be due and upon such adjudication ordered paid."

The plaintiff in error, who had been engaged since 1902, or for some time prior thereto, in the manufacture of bottles, demijohns, etc., had been supplying the State Dispensary until some time in the early part of 1906, at which time an investigation had been instituted by the State into the alleged corrupt practices of third persons with the Board of Directors, and charges of gross misconduct had been made, and had, from and after April, 1906, further supplied the State Dispensary with its manufactured articles for use in the operation of the State Dispensary, under entirely different circumstances, and without any alleged undue influence or combination with the officers of the State Dispensary, at reasonable and proper prices, presented its claim to said Commission for \$23,013.75. Upon such presentation, hearings were had, whereat testimony of witnesses was introduced, as well as documentary evidence with regard to the prior transactions of plaintiff in error with the Board of Directors. After hearing such testimony, and argument thereon, the Commission filed its decision on the 17th of November, 1909, wherein it found that there had been illegal and improper transactions between the operating officers of plaintiff in error and the Board of Directors of the State Dispensary, and that the result of such combination and agreement was that the State had been made to pay to plaintiff in error, in excess of the fair and reasonable market price of the goods sold, the sum of \$51,432.99, and as a result of their hearing and investigation as to whether or not the claim presented was

a just liability, they held that it was not, and offset the same by what they had ascertained that the State had been illegally, by the combination between the plaintiff in error and the Board of Directors, charged for its purchases, to wit, \$51,432.99, which, being deducted, still left the plaintiff in error indebted to the State of South Carolina in the sum of \$28,419.24. See opinion of Commission, Tr., f. 105, p. 60.

It was not claimed in the State Court that the finding of this indebtedness to the State amounted to a judgment, or an ordinary judicial ascertainment of the debt upon which judgment and execution could issue, or a lien created upon the property of the plaintiff in error situate in South Carolina; but it was contended that, in the ascertainment of whether the claim then presented by the plaintiff in error was a just liability, they ascertained that they owed the State for money illegally obtained from the officers of the State through conspiracy and combination, and should be returned to the State. Therefore, the claim was rejected.

From this decision an appeal was taken, as provided for by statute, to the Supreme Court of the State.

After this decision by the Commission, nothing was done by it until after the passage of an Act by the General Assembly of the State, entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved the 23d day of February, 1910 (XXVI Stats., 876). This Act is set out in the transcript at folios 35 to 39, pages 21 to 23, and is also printed in the Appendix to this brief.

Under this Act, by Section 4, it is provided that "the State Dispensary Commission is hereby authorized and empowered to order any officer, or officers, in charge or custody of any fund or funds arising from the sale of the assets of any former county Dispensary, or of any assets belonging to any existing county Dispensary, to withhold payment of the same until the further order of the State Dispensary Commission, and any and all officers and persons whomsoever are forbidden, upon the order of the State Dispensary Commission, to pay out any such funds until so permitted by the said Commission."

By Section 6 of said Act it is provided: "In any and all cases where the State Dispensary Commission has heretofore found any

amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing and all Boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all county Dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State."

By Section 10 of this Act it is provided: "This Act shall take effect immediately upon its approval by the Governor."

Immediately thereafter, notice was given to the Richland County Dispensary Board by the Commission to withhold all moneys in its hands which might ordinarily be applicable to the payment of any account with the plaintiff in error. There was no proof that any notice was given to any other County Dispensary Board.

By Section 9 of said Act it is provided that "In all cases pending before the said State Dispensary Commission upon any claim or claims against any person or persons, or any corporation or corporations, owning any real estate in any county in this State, the said Commission shall file in the office of the Clerk of Court in each county where such real estate is situated a notice of the pendency of such cases and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lean upon any such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State."

In pursuance of this provision, the Commission did direct and authorize the institution before it of an examination of the said claim, and that notice to the plaintiff in error should be given, pursuant to the provisions of said Act, and did file in the office of the Clerk of the Court of Common Pleas for Richland county the notice set out in paragraph 9 of the complaint. Whereupon this

proceeding was commenced in the original jurisdiction of the Supreme Court of the State, alleging the creation of the Commission under the Acts before recited, the transactions of the plaintiff in error with the old Board of Directors of the State Dispensary, setting out the decision of the Commission upon the claim presented by it, denying their right to offset the claim of the State against the claim presented by it, alleging information that the Governor of the State had directed or would direct the withholding of moneys in the hands of Dispensary Boards of counties applicable to the payment of the same, and applying them to the amount or retaining them on account of the claim of indebtedness that the State held against it; that the accounts kept by the several county Dispensaries showed that there was owing to the plaintiff in error, on the 20th of November, 1909, on transactions had with plaintiff in error, the sum of \$6,355.92 (this amount was ascertained to be incorrect, and that the correct amount was \$10,890.45. See answer at page 17 of the transcript, and Exhibit C to the finding of the referee, which shows the amount to be \$10,420.14).

That an arrangement had been entered into between W. F. Stevenson and counsel for plaintiff in error, which it was claimed had been violated by the Dispensary Commission, acting under the Act of February 23, 1910. And plaintiff in error prayed for judgment that the defendants be perpetually enjoined and restrained from allowing the notices aforesaid to be contained on file in the office of the Clerk of Court for Richland county, and from in any manner demanding or receiving said sums, or any of them, alleged to be due by the several county Dispensaries to plaintiff in error, or from in any manner interfering with the payment of any such sum or sums by said county Dispensaries to plaintiff in error, and for other and further relief. Tr., ff. 1-12. pp. 1-7.

A rule to show cause was issued upon this complaint, and return made thereto by all of the defendants, setting out in full the entire transaction, as appears from the return, and stating the exact amounts due, and further that there was no violation of the agreement upon the part of Mr. Stevenson, but on the contrary, that this agreement, which was contained in his letter to Mr.

Lyles, set out in the complaint, had been violated by the plaintiff in error by withdrawing from the Dispensary Boards the amount of \$4,534.53, because of the fact that the Commission relied upon such agreement and had not notified the several County Dispensary Boards to decline to pay any claim due to the plaintiff in error; and further setting forth that they had acted as provided in said Act in giving said notice to the Richland County Dispensary Board and in filing a notice of the State's claim with the Clerk of Court for Richland county, in which county the plaintiff in error possessed certain real estate and manufacturing plant. Tr. ff. 17-38, pp. 11-23.

Upon the return being made, the Supreme Court referred it to the master for Richland county to take testimony upon such questions of fact as arose upon the complaint and affidavits annexed thereto and the returns and answers of the defendants, etc. (Tr. f. 52, p. 31.)

He made his report (Tr., f. 92, p. 53), and exceptions were made thereto by defendants in error (Tr., f. 96, p. 55); but as the Supreme Court did not determine these exceptions, nor saw fit to consider the question of the agreement between the counsel, what was the actual agreement as judicially ascertained has not been determined, the Court saying:

"From the foregoing it will be seen that it is unnecessary to inquire or decide whether there was an agreement between the attorneys for plaintiff and the attorneys for the State, as to the collection of the amounts due plaintiff from the county Dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it has been violated. The Dispensary Commission is the sole arbiter of the rights of the plaintiff, if it has any, with regard to that matter." (Tr., f. 118, p. 68.)

From this judgment the plaintiff in error has sued out this writ of error and has made the assignments of error found in the transcript at folios 130 to 134, pages 75 to 77.

BRIEF OF ARGUMENT.

The first assignment is that the Supreme Court of South Carolina erred "in holding and deciding that the State Dispensary

Commission acted within the limits of the authority and discretion conferred upon it by the Legislature, in ordering the funds in the hands of the county Dispensaries due to plaintiff turned over to itself, and that the said action of the said Commission did not impair the obligation of plaintiff's contract with the State and deprive plaintiff of its property without due process of law and deny to plaintiff the equal protection of the laws, in violation of Section 10, of Article I, and Section 1 of the Fourteenth Amendment of the Constitution of the United States."

We think that the contention of the plaintiff in error as made by this assignment, as well as the other assignments of error, is based upon erroneous assumptions and misapprehensions of the facts. The claim of the plaintiff in error of \$23,013.75, which was presented to the State Dispensary Commission, arose from transactions had with the old Board of Directors of the State Dispensary, and under contracts with that Board. The moneys involved in this case arose after the repeal of the Dispensary Law of 1896, and its amendments, and the abolishment of the State Dispensary. We are not concerned here with any contracts made by the Board of Directors of the State Dispensary, but with contracts that were made with the several County Boards created under the Act of 1907. A good many of the counties, after running for some years, had voted out the county Dispensary, and there were only five or six County Boards in operation at the time this action was brought.

As heretofore stated, there was on the 20th of November, 1909, due to the plaintiff in error, as appeared from the books of the several Boards, and as shown by the report of the master in this case, \$10,420.14. This included not only the county Dispensaries which had ceased operations, but as well those in operation. The question, then, is whether this money in the hands of the several Boards was money belonging to the State, or whether it was money belonging to the plaintiff in error; that is to say, whether it had any vested interest in this money or any lien thereon.

The General Assembly, in an Act approved the 24th of February, 1908, entitled "An Act to make appropriations to meet the expenses of criminal prosecutions and proceedings against certain

officers and other persons, and to provide for the payment thereof," by Section 1 directed "that the sum of \$15,000, or so much thereof as may be necessary, be, and is hereby, appropriated to meet the expenses of any criminal prosecutions that have been or may be commenced against any person or persons charged with violation of the law in any manner connected with the late institution called the State Dispensary, including expenses of associate counsel and such other expenses as may be incident thereto: *Provided*, That the Attorney General shall not employ any member of the General Assembly as attorney in said prosecutions."

And by Section 2, "that the said sum of \$15,000 shall be paid into the State treasury by the State Dispensary Commission out of any funds in its hands arising from the business or property of the State Dispensary, and the same shall be paid out by the State Treasurer upon the warrant of the Comptroller General, and accounted for in the same manner as other funds appropriated for the use of the Attorney General's office."

Mandamus proceedings were commenced by the Attorney General to require the State Dispensary Commission to comply with Section 2 of the Act, and the question there presented was whether or not the funds in the hands of the State Dispensary Commission arising from the business or property of the State Dispensary belonging to the State could be disposed of as it should direct, and it was there held by the Supreme Court that the "State Dispensary and all of its assets acquired under the statute are to be regarded as the property of the State, and the debts contracted in its lawful management are to be regarded as the debts of the State, not only by virtue of the judgment of the highest Courts of the land, but also by virtue of the expressed declarations of the Constitution of the State."

State ex rel, Lyon, Atty. Gen., vs. W. J. Murray, et al., as State Dispensary Commission, 79 S. C., 316.

Further, that Court says:

"It seems hardly necessary to say there is no legal requirement that the State shall manage its financial affairs or any branch of them through one general fiscal agent called its Treasurer, or that

its funds or any portion of them should be kept in one office called its treasury. The State Treasurer is a constitutional officer, but his duties and powers depend entirely upon the will of the General Assembly of the State. Presumably, the State funds are in his hands, but the General Assembly may require the public funds, or any part of them, to be put in any place or with any person it sees fit; and there is no limit to its power in imposing conditions and conferring discretion on its fiscal agent as to the disbursements of these funds to its creditors." *Idem*, p. 325.

That Court further decided that the contracts made by the Board of Directors of the State Dispensary in operating and running such business were, under the terms of the Constitution of the State, contracts of the State, and that the relation of simple creditor and debtor was created thereby, without any lien or trust whatever upon any of the funds derived from the operation of the State Dispensary in favor of the creditor, and that the moneys derived from the conduct of such business were the funds of the State while in the hands of the Board of Directors, as well as in the hands of the State Dispensary Commission, created to wind up the affairs of this departmental institution of the government, as it has been called.

This case was cited by this Court in *Murray vs. Wilson Distilling Co.*, 213 U. S., 165, and the conclusion reached by the Supreme Court in the mandamus proceeding were affirmed in that case, the same questions arising therein as in the case before the State Supreme Court. This Court said:

"If we consider as an original question the provisions of the Constitution of South Carolina on the subject, and the terms of the statutes of that State establishing the Dispensary system, we think it is apparent that the purchases were made by the State officers or agents, of liquor for consumption in South Carolina, were purchases made by the State for its account, and, therefore, that the relation of debtor and creditor arose from such transactions between the State and the persons who sold the liquor. And this irresistible conclusion, arising from the very face of the Constitution and statutes, is removed beyond all possible controversy by the decision of this Court in *Vance vs. Vandercook Co.*, 170 U. S., 438, and by the construction given by the Supreme Court of

South Carolina to the State statute prior to the commencement of this litigation, in *State, ex rel. Hay vs. Farnum*, 73 S. C., 165, as well as by the convincing opinion expressed by that Court in reviewing the State statutes in the mandamus case already referred to, as reported in 79 S. C., 316."

It is true that this claim arose not from the sale of liquor, but from the sale of bottles, demijohns, etc., which were necessary in the conduct and operation of the State Dispensary, as it was also necessary for the conduct of the county Dispensaries. The construction of the statutes, and the reasoning of the Courts in these cases must apply to this case, unless the Act of the Legislature which created the County Boards produced a different relation.

This Court, in speaking of this second Act, in the same case of *Murray vs. Wilson Distilling Co., supra*, said:

"The law of 1896, as amended, was repealed on February 16, 1907. Acts So. Car. 1907, p. 463. The repealing Act did away with the general control of the traffic by means of a State Board, and therefore abolished that Board. Instead of the provision previously existing, a more local one was substituted. The question whether liquor should be sold in a particular county was left to the voters of the county. If, as the result of an election, it was determined that the traffic in liquor should exist in a county, it was provided that such traffic should be exclusively carried on by means of County Boards, appointed by the Governor. Conformably to the Constitution, these Boards were authorized to buy, 'in the name of the State,' liquors to be sold within the county, with a proviso, however, restricting the liability of the State to the sum of the assets of the local Dispensary."

The principal features of the old law with regard to the purchase of whiskies were distinctly maintained. In truth, the only change that occurs to us which was made is contained in Section 6, where the County Dispensary Boards are declared to be county officers, and are authorized and empowered under the authority and in the name of the State to buy in any market and retail within the State the liquors and beverages as provided therein. This is using the very terms of the Constitution. The proviso is that the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which

the purchase was made, and this is the only new clause, and this it is that is contended creates a trust in favor of the plaintiff, in error, who did not deal in liquors and beverages.

These officers are denominated county officers; nevertheless, they are agents of the State, contracting by authority of and in the name of the State, and clearly cannot be transmuted into trustees of the plaintiff in error and other simple creditors, and placed under control of the Courts to compel them to pay to such creditors moneys which it is claimed they hold, for to undertake to hold this position is to reverse the precise point decided in the case of *Murray vs. Wilson Distilling Co., supra*, that the State cannot be compelled to perform its contract of purchase by enjoining its officers who have acted by its authority and in its name.

It is argued for the plaintiff in error that it had a vested right in the proceeds of the sale of glassware so purchased, inasmuch as by the statute a trust was created in the proceeds of the sale of such ware, and resort is made to Section 5 of the Act of 1907 for this construction. The purchases made by the County Dispensary Boards from plaintiff in error were for glassware, and the accounts due by the State through such County Dispensary Boards from plaintiff in error were for glassware, and not for liquor and beverages, which they were authorized and empowered, under the authority and in the name of the State, to buy in any market and retail within the State.

The lien claimed, or the trust which was impressed upon the proceeds of the sale of whiskey could have no more foundation in the case of the purchase of glassware than it would have for the purchase of fuel or wrapping paper used in the Dispensary as a necessary expense thereof.

In an action at law brought by the plaintiff in error against the defendants in error, in the District Court of the United States for the Eastern District of South Carolina, to recover some moneys which were in the hands of the several County Dispensary Boards, the same points were made. The District Judge, who, upon stipulation of counsel submitting all the issues to him instead of to a jury, upon this point, says:

"If the facts were as they are presumed to be by the plaintiff in its pleading, this Court would find no difficulty in holding as a

conclusion of law that so much of the Act of February 23d, 1910, as may seek by force of the Act itself to divest the plaintiff summarily of any vested right or title acquired by virtue of the Act of February 15, 1907, or as may seek to take summarily any property belonging to plaintiff and apply it to the State's use, is null and void. In other words, if the said amount of \$17,550.07 was a fund belonging to the plaintiff, was its property, to which it had title, then the Act of February 23, 1910, in so far as it attempted to summarily take that fund and give it to the State without proper judicial process, was and is null and void under the provisions of the United States Constitution above mentioned. If, however, the said amount of \$17,550.07 was not a fund to which the plaintiff had such title as to be able to recover it in the proceedings now before this Court, but, if it was and is the property of the State of South Carolina, then the statute would not be subject to the prohibitive clauses of the United States Constitution. * * * To whom did the fund of \$17,550.07 belong both before and after it reached the hands of the defendants? Under Section 6 of the Act of 1907, County Dispensary Boards are 'authorized and empowered under the authority and in the name of the State to buy in any market and retail within the State liquors and beverages as provided herein.' If this was all, there would be no doubt that the County Dispensary Board was simply the agent of the State to do as commanded. If the liquors and beverages were purchased under the authority and in the name of the State, then the State was the purchaser and the owner of the articles when purchased. Necessarily it follows from this that, if the State was the purchaser, the State was the party liable on the contract of the vendor for the purchase price. Necessarily it also follows that, if the State was the purchaser and the owner of the articles when purchased, it was also the owner of the proceeds of the same articles when sold by its direction. It is true that in the first two lines of this section the members of the County Dispensary Board are declared to be 'county officers.' There is no reason, however, why the State should not operate, if it sees fit, through or by means of local county officers who owe the existence of their office to a State statute, as well as by means of general State officers. It might be a question if the officers

chose to make it, whether as a county officer the performance of a general State duty could be devolved upon him, but, if the act performed was one in the name and under the authority of the State, the State would still be the responsible party, notwithstanding it might have been performed by an officer who could not have been compelled to perform it.

"So the proviso following the clause above quoted is: 'That the State shall not be liable upon any contract for the purchase thereof beyond the actual cash assets of the Dispensary for which the purchase is made.'

"The very language of this clause would show that it was intended that the State should be liable upon any contract up to the extent of the actual assets of the county Dispensary for which the purchase was made. If the State was liable, then it meant that the State was vendee, and as such the owner of the property purchased. That the liability of the State was limited would not appear to affect this logical sequence. This limitation would appear simply to be notice to any one selling to the County Dispensary Board on the credit of the State that it must be careful not to sell to that particular County Dispensary Board any articles which exceeded in the cost price the actual assets in the hands of that particular County Dispensary Board. It would not, however, affect the express provision that, if it did sell, it sold to them under authority and in the name of the State; in other words, sold to the State the articles sold. This inference is corroborated by the provisions of Section 18, providing for the division of the profits in each county of the business of the sale of alcoholic liquors and beverages as carried on under the statute by the County Dispensary Board. These profits are arbitrarily divided differently in different counties. In some one-third goes to the municipality in which the Dispensary may be located; in another one-half goes to such municipality; in other counties one-third goes to the county school fund; in other counties only one-fifth goes to that fund. This evidences that the State retained to herself the entire control of the profits to be distributed as it saw fit, as its own money and with the power at any time by statute to repeal any existing mandate for the division of these profits, and make another and wholly different distribution.

"It is claimed that, inasmuch as the statute only undertakes to deal directly with the distribution of the profits of the business, the inference is that the balance was devoted by the State to the payment of the expenses of that business and incidentally as part of those expenses to the payment of the persons from whom the articles necessary for the business were purchased. It is contended that this constitutes such balance a sort of trust fund to be held by the County Dispensary Board for those specific parties, thus constituting the persons who might be the holders of that indebtedness, which must be deducted before the profits are ascertained, beneficiaries directly interested in the fund as a trust fund. This result would be a very strained inference under the circumstances. The direction that the profits must be ascertained and distributed may be a direction by the State to its agents to pay the expenses of the business before ascertaining and distributing the profits, but it is no more a segregation to the creditors individually of any part of the funds to pay the expenses than is the act of any prudent business man who pays the expenses of his business before he spends his profits. The State could at any time interfere and direct that these expenses should not be paid until vouched and audited as the State saw fit, or, in fact, it might expressly prohibit their payment until directed by an Act of the Legislature, or, if it chose to go to that length, might wholly forbid the payment. The method adopted by the State for the payment of the expenses of the business authorized by it in no sense can be fairly construed as constituting the proceeds of the State's own property which could be used by it for the payment of those or any other expenses, a trust fund to which the parties to whom the expenses should be paid are entitled to look to as a specific fund assigned to them of which they are the beneficiaries."

"The provisions of Sections 11 and 13 of the Act of 1907 lend no additional strength to the argument in favor of the inference sought to be drawn by the plaintiff. Those sections prescribe the methods to be followed by the State's agents in the conduct of the State's business, so as to secure its efficient and safe performance. In considering this very Section 6 of the Act of 1907, the Supreme Court of South Carolina held that the

county Dispensaries were conducted under the authority and in the name of the State. 'Therefore the officers in charge of them are agents of the State, and the funds arising from the sale of liquors through them are the funds of the State, and the debts due for goods sold them are the debts of the State.' *Glass Co., vs. State*, 87 S. C., 288. In the same case the State Court affirmed the conclusion of that Court in the case of *State vs. Dispensary Commission*, 79 S. C., 325."

Carolina Glass Co. vs. Murray, 197 Fed., 396-399.

The judgment of the District Court was affirmed upon writ of error by the Circuit Court of Appeals of the Fourth Circuit (206 Fed., 635), and the reasoning of the District Court concurred in. It is true that there are writs of error taken to the District Court, as well as to the Circuit Court of Appeals, upon the decision, and the cases are now pending in this Court, but we cite this from the opinion as it sets forth, we respectfully submit, the true construction of the County Dispensary Board Act of 1907. Hence, we submit that the Act creating such County Dispensary Boards did not change in any way the construction and principles laid down in the cases of *State, ex rel. Lyon vs. Murray, et al.*, 79 S. C., 316, and *Murray vs. Wilson Distilling Co.*, 213 U. S., 151.

It has also been well settled, which needs no discussion, that the State cannot be sued without its consent, and that such consent can be given, as it is a voluntary act, under such conditions as it sees fit to impose.

Beers vs. Arkansas, 20 How., 527.

Smith vs. Reeves, 178 U. S., 436.

Chandler vs. Dix, 174 U. S., 590.

Murray vs. Wilson Distilling Co., 213 U. S., 151.

Bolens vs. Wisconsin, 231 U. S., 616.

Here the State has prescribed how the claim should be presented, and has conferred the power and imposed upon the State Dispensary Commission the duty to investigate, ascertain, determine and fix upon whether such claims when presented are just liabilities of the State.

It is contended under the first assignment of error that the action of the Commission impaired the obligation of plaintiff in

error's contract with the State, and deprived plaintiff in error of its property without due process of law. The contract with the State, who through its proper officers purchased glassware from plaintiff in error, created, as stated, the simple relation of debtor and creditor. There was no legal obligation enforceable in law or equity against the State. There only existed a moral obligation. There was no remedy to be taken away that plaintiff in error possessed or could enforce; nor was it deprived of any of its property which was in the hands of the county Dispensaries, because it was not its property, but it was the property of the State, which could dispose of it as it saw fit, and under the Act, when its officers notified the Dispensary Board to withhold payment of plaintiff in error's claim, or ordered the fund or funds in the hands of the county Dispensaries to be turned over to the State Commission it was disposing of its own property in such way as it saw fit, and did not deprive the plaintiff in error of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Federal Constitution.

The judgment of the State Supreme Court under review, in construing Section 4 of the Act of 1910, which authorized the State Dispensary Commission "to order any officer or officers in charge or custody of any fund or funds arising from the sale of the assets of any former county Dispensary, or of any assets belonging to any existing county Dispensary, to withhold payment of the same until the further order of the State Dispensary Commission, and any and all officers and persons whomsoever are forbidden upon the order of the State Dispensary Commission to pay out any such fund until so permitted by the said Commission," and Section 6, "in any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all county Dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as

may be on hand, to cover the amount so found to be due the State," declared them to be valid, and held:

"In ordering the funds in the hands of the County Boards turned over to itself, the Commission acted within the limits of its authority and discretion conferred upon it by the Legislature, and this Court has no power to interfere."

The Court further determined that Section 7 of the Act, which created a lien upon all judgments rendered by the Commission on the property of the judgment debtor situated within the State, etc., was invalid, as well as the provisions of Section 9 of said Act, which authorized the filing of a notice with the Clerk of Court in accordance with its terms, and that therefore that the act of the Commission and its attorneys in filing said notice was without warrant of law, and should be enjoined. In this respect the Court says:

"So long, therefore, as the action of the Commission was confined to the investigation of all dealings, past and present, with the Dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the Constitution for the Legislature to provide by law how claims of the State against others shall be established or adjusted, except through the Courts. We conclude, therefore, that in so far as the Act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff, it is unconstitutional, null and void. And, as the lien which the Act attempts to create is based upon the unauthorized act of the Commission, it is likewise null and void. The judgment of this Court is that the decision of the Commission upon plaintiff's claim against the State be affirmed, and that the defendants be enjoined from asserting or claiming any lien upon plaintiff's property under or by virtue of the notice filed in the office of the Clerk of Court for Richland county, and that said notice be cancelled of record."

Tr. f. 122, p. 70.

All other provisions of the Act were held to be valid. The Commission undertook to defend and justify its actions by the provisions contained in Sections 7 and 9 of the Act. Such

defense and justification was declared to be untenable because of the unconstitutionality of such provision, but so far as the Act was valid it gave justification to the defendants, and as their acts were the acts of officers of the State only and not as individuals, and done in the performance of their statutory duties and under the directions of the State and for the interests of the State in the protection of its funds, to that extent it was an action substantially against the State, and the Court could not interfere.

(2) The second assignment imputes error to the Supreme Court of the State in holding and deciding "that it was unnecessary to inquire whether there was any agreement between the attorneys for plaintiff and the attorneys for the State of South Carolina as to the collection of the amounts due plaintiff from the county Dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it had been violated, and that the Dispensary Commission was the sole arbiter of plaintiff's rights, if it had any, with regard to the matter, when plaintiff asserted and claimed protection from such contract rights under Section 10 of Article I of the Constitution of the United States."

If the funds in the hands of the county Dispensaries was the property of the State and not that of plaintiff in error, nor was it subject to any lien or trust in favor of it, then it necessarily followed that the control over it rested with the Legislature, who subsequently, on the 26th of February, passed an Act containing provisions which directed the Dispensary Commission how to control or dispose of the same, and the plaintiff in error had no right to and could assert no right to such funds, whatever may have been the negotiations by counsel who were not empowered by any Act existing at that time to dispose of the rights of the State in such property. And this being the case, the plaintiff in error could only adjust or settle its claim with the State Dispensary Commission, upon whom power had been conferred by the Act of 1910. As a matter of fact, however, it appears that there was confusion upon the part of respective counsel as to what arrangement had been made, but it certainly appears in the record that, with regard to the assets in the hands of the County Dispensary Boards at the time of the alleged agreement, there was no arrangement or stipulation upon the part of Mr. Steven-

son to surrender such funds to the plaintiff in error or to assent to the payment by county Dispensaries of any claims of plaintiff in error contracted with it prior to the 20th of November, 1909; Mr. Stevenson in his letter to Mr. Lyles expressly stating that he would confer with counsel as to the accounts due the company as soon as he had reached a determination as to them, and that with regard to future shipments that he would not ask the money to be held, "so as to interfere with the money coming from any shipment made today or hereafter until further notice." Tr. f. 7, pp. 4, 5.

The amount then due, it was subsequently ascertained, was \$10,420.14, but it appears that in the meanwhile and prior to the approval of said Act, the plaintiff in error had, without notice to any member of the Commission or any one representing the State's interest, withdrawn from the county Dispensaries that had ceased to operate because of having been voted out by the people, \$6,915.95. See Report of Referee, Tr. f. 95, p. 55. It is quite evident that whatever may have been the intention of either of the respective counsel, it could not affect the Legislature's right to pass the Act in question with regard to the disposition of funds in the county Dispensaries prior to the 20th, and such as might thereafter come into its hands. The moneys which were on hand in the county Dispensaries and which the County Dispensary Boards were directed by the State Dispensary Commission not to pay out were about the same amount as was originally on hand, so far as can be ascertained without a proper accounting, and although the plaintiff in error's officers had violated the agreement, and had taken from the Dispensaries moneys which belonged to the State, yet the State having in possession of its officers moneys which were applicable to the payment of the current business of the concern, could take and withhold the same as its own, in substitution for that which had been improperly taken.

But it does not appear to us that this raises any Federal question which this Court can review. To make a contract in behalf of the State, there must be some authority shown upon the party assuming to act for the State. And there is no pretense in this case that there was any such authority shown. The defendants

in error here certainly did not act. There was no resolution conferring upon one of the counsel assuming to represent it authorizing him to make such contract in behalf of the Commission in the interests of the State of South Carolina, nor as a matter of fact did the Commission have any such authority to confer or give. There was no authority shown upon the part of the Governor or the Attorney General to bind the State by virtue of any Act or Resolution of the State with regard thereto, and there was no obligation upon the part of the State which had been violated or which could disturb the rights of the State with regard to its own funds in the hands of its officers. Hence, the Supreme Court of the State, having the matter before it, distinctly declares that "It is unnecessary to inquire or decide whether there was an agreement between the attorneys for plaintiff and the attorneys for the State, as to the collection of the amounts due plaintiff from the county Dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it had been violated. The Dispensary Commission is the sole arbiter of the rights of the plaintiff, if it has any, with regard to the matter."

That is to say, that at the time of the writing of such order, under the Act of 1910 the Commission had a right to adjust and settle the claims of the State against the plaintiff in error.

(3) The third assignment imputes error to the State Court in holding "that there was not a legally and morally binding contract between plaintiff and the State of South Carolina, and the defendants as agents and representatives of said State, concerning the shipments and deliveries to be made and actually made by plaintiff to the county Dispensaries, in which plaintiff was protected by Section 10 of Article I of the Constitution of the United States."

We have just stated that there was no contract, that the minds of the parties had not met with regard to this matter, and that there was a misapprehension and confusion. But we have further pointed out that with regard to its rights there does not appear to be any authority to make a contract, even if one had been made, and that therefore there was no obligation to be impaired, and further, that the plaintiff in error was the party

which had violated the contract, and that the State had a right to retain the equivalent of what, in violation of such arrangement, if there was such, it had taken from the officers of the State.

(4) This assignment imputes error upon the part of the State Court in holding that the "action of the defendants taken pursuant to the Act of February 23, 1910, entitled 'An Act to further provide for the winding up of the State Dispensary,'—in ordering and requiring the county Dispensaries to pay over to defendants the funds due plaintiff and the title to which was at least in equity and good conscience in plaintiff, was unconstitutional, null and void, because in violation of Section 10 of Article I and Section 1 of the Fourteenth Amendment of the Constitution of the United States."

We have already endeavored to point out as succinctly as we could, that the plaintiff in error had no vested right, title or interest in and to such assets, nor any lien upon the same, nor was there any trust imposed thereon for the benefit of the plaintiff in error, and that the action of the Commission in notifying and requiring the county Dispensaries to withhold the funds and not pay the same over to the plaintiff in error was in pursuance of a direction of the Legislature, which said direction was valid and binding upon them.

(5) This assignment imputes error to the State Court in holding and deciding that the "Act approved February 23, 1910, entitled 'An Act to further provide for the winding up of the affairs of the State Dispensary,' was unconstitutional, null and void, in so far as it authorized, required or permitted defendants to receive, take or confiscate the funds in the hands of the county Dispensaries due and owing to plaintiff, and at least in equity and good conscience the property of plaintiff, because the same impaired the obligation of plaintiff's contract with the State, deprived plaintiff of its property without due process of law, and denied to plaintiff the equal protection of the laws, in violation of the Constitution of the United States."

This assignment of error also ignores the settled construction of the statutes, to the effect that the funds in the hands of the county Dispensaries were not the funds of the plaintiff in error, nor was it entitled thereto by reason of any lien or vested right

therein, but that the same was the property of the State and subject to its direction and control, and therefore there could be no impairment of the obligation of plaintiff in error's contract of purchase with the State.

It is respectfully submitted that the judgment below should be affirmed.

THOMAS H. PEEPLES,
BENJAMIN LINDSEY ABNEY,
Counsel for Defendants in Error.

October 30, 1914.

APPENDIX.

CONSTITUTIONAL PROVISIONS.

Article VIII, Section 11, Constitution 1895.

"In the exercise of the police power the General Assembly shall have the right to prohibit the manufacture and sale and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture and sell and retail alcoholic liquors or beverages within the State under such rules and restrictions as it deems proper; or the General Assembly may prohibit the manufacture and sale and retail of alcoholic liquors and beverages within the State, and may authorize and empower State, county and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities under such rules and regulations, as it deems expedient: *Provided*, That no license shall be granted to sell alcoholic beverages in less quantities than one-half pint, or to sell them between sundown and sunrise, or to sell them to be drunk on the premises: *And provided, further*, That the General Assembly shall not delegate to any municipal corporation the power to issue licenses to sell the same."

Article XI, Section 12, Constitution 1895.

"All the net income to be derived by the State from the sale or license for the sale of spirituous, malt, vinous and intoxicating liquors and beverages, not including so much thereof as is now or may hereafter be allowed by law to go to the counties and municipal corporations of the State, shall be applied annually in aid of the supplementary taxes provided for in the sixth section of this Article; and if after said application there should be a surplus, it shall be devoted to public school purposes, and apportioned as the General Assembly may determine: *Provided, however*, That the said supplementary taxes shall only be levied when the net income aforesaid from the sale or license for the sale of

alcoholic liquors or beverages are not sufficient to meet and equalize the deficiencies for which the said supplementary taxes are provided."

STATUTES.

(XXV Stats., 835.)

AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY CONNECTED WITH THE STATE DISPENSARY, AND TO WIND UP ITS AFFAIRS.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well-known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required in the sum of \$10,000.

SEC. 2. Said Commission shall immediately organize by the election of a Chairman and Secretary from their number.

SEC. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased; and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for

the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further*, That all payments shall be made in gold and silver coin of the United States, in United States currency, or in national bank notes.

SEC. 4. The compensation of each member of said Commission shall be \$5 per day for each day actually employed about the business, and actual expenses for the time engaged: *Provided*, That they shall receive no compensation for services rendered on this Commission after January 1, 1908.

SEC. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

SEC. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

SEC. 7. The said Commission shall submit to the Governor at the earliest day practicable a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of their actings and doings.

SEC. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to Investigate the Affairs of the Dispensary, as prescribed by an Act to Provide for the Investigation of the Dispensary, approved 24 January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Approved the 16th day of February, A. D. 1907.

(XXV Stats., 1289.)

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY CONNECTED WITH THE STATE DISPENSARY AND TO WIND UP ITS AFFAIRS," SO AS TO PROVIDE COMPENSATION FOR MEMBERS OF THE SAID COMMISSION FOR THE YEAR 1908, AND TO PROVIDE FOR THE SALE OF THE REAL ESTATE HERETOFORE USED IN CONDUCTING THE DISPENSARY, AND TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS OF THE STATE DISPENSARY.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That an Act entitled "An Act to provide for the disposition of all property connected with the State Dispensary and to wind up its affairs," approved the 16th day of February, 1907, be, and the same is hereby, amended by striking out the figure 8 at the end of Section 4, and inserting in lieu thereof the figure 9, and by adding at the end of said section the following: "That in addition to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty (\$150.00) dollars:" *Provided, further,* That the per diem provided for herein shall begin on the date of the approval of this Act.

SEC. 2. That said Act be further amended by adding at the end thereof the following, as Section 9: "Section 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required upon being notified by the State Dispensary Commission, that the real estate heretofore used for the offices and warerooms, the typewriters, adding machines, files, metal, and other furniture in the offices and warerooms, etc., of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell same under and pursuant to the terms of Section 91, Code of Laws of South Carolina, Vol. I, 1902: *Provided,* That the said property shall not be sold for less than seventy-five thousand (\$75,000.00) dollars, and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same: *Provided, further,* That the

typewriters, adding machines, files, metal, and other furniture may be transferred by the Commissioners of the Sinking Fund to any of the State offices that, in the judgment of the Commissioners, may need them."

SEC. 3. That said Act be further amended by adding the following as Section 10: "Section 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland county against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary."

SEC. 4. That said Act be further amended by adding the following as Section 11: "Section 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary, and to pay for the State any and all just claims, which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have been, or may hereafter be, collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court," so that said Act, when so amended, shall read as follows:

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required, in the sum of \$10,000.00.

Sec. 2. Said Commission shall immediately organize by the election of a Chairman and Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State, except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further*, That all payments shall be made in gold and silver coin of the United States currency or in national bank notes.

Sec. 4. The compensation of each member of said Commission shall be five (\$5.00) dollars per day for each day actually employed about the business and actual expenses for the time engaged: *Provided*, That they shall receive no compensation for services rendered on this Commission after January 1, 1909: *Provided, further*, That in addition to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty (\$150.00) dollars: *Provided, further*, That the per diem provided for herein shall begin on the date of the approval of this Act.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants, and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor, at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of all their actings and doings.

Sec. 8. The said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary and all the power and authority conferred upon the Committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Sec. 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required, upon being notified by the State Dispensary Commission, that the real estate heretofore used for the offices and warerooms, etc., of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell the same under and pursuant to the terms of Section 91, Code of Laws of South Carolina, Vol. I, 1902: *Provided*, That the said property shall not be sold for less than seventy-five thousand (\$75,000.00) dollars, and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same.

Sec. 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland county against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by

them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary.

Sec. 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary. And to pay for the State any and all just claims which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have or may hereafter be collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court, as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court.

Sec. 12. That no funds arising from the sale of the assets of the former State Dispensary, or from the collection of debts due the said Dispensary, or moneys delivered by the State Treasury to said Commission shall be paid out for any purpose or to any person whatsoever, except upon the check of the Chairman of said Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such checks as may be presented by the Chairman of said Commission only upon presentation of the same, together with a certificate of said Commission or a majority thereof, which certificate shall show: that the said check is issued in payment of some expense provided for by statute, or necessarily incident to closing up the affairs of the Dispensary, or for services rendered said Commission in closing up the affairs of said Dispensary, or contracted for in accordance with law by said State Dispensary Commission, or that it is in payment of a claim of a creditor which has been adjudged by said Commission to be due, and upon such adjudication ordered paid.

In the Senate-House the 21st day of February, in the year of our Lord one thousand nine hundred and eight.

THOS. G. McLEOD,
President of the Senate.

RICHARD S. WHALEY,
Speaker of the House of Representatives.

Approved the 24th day of February, A. D. 1908.

M. F. ANSEL,
Governor.

(XXVI Stats., 876.)

AN ACT TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS
OF THE STATE DISPENSARY.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the State Dispensary Commission is hereby authorized and empowered, in addition to the powers heretofore conferred upon it, to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations heretofore doing business with the State Dispensary, and to fully investigate transactions by any and all persons, firms or corporations with the State Dispensary, and to make settlement of all claims in favor of the State against any such persons, firms or corporations, and collect and receipt for the same.

SEC. 2. For the purpose of carrying out the provisions of this Act, the State Dispensary Commission shall have all the powers and privileges conferred upon it by any and all previous Acts and amendments thereto.

SEC. 3. Any finding of the State Dispensary Commission, under the provisions of this Act, shall be final, and upon such finding the Dispensary Auditor shall deduct the amount, or amounts, so found to be due and owing the State from any sum or sums that may be found to be due and owing by any County Dispensary to any such person, firm or corporation found by the State Dispensary Commission to be indebted to the State, and

each and every County Dispensary Board and other officer in charge of County Dispensary funds or assets arising from the sale of property belonging to a County Dispensary, or Dispensaries, shall, before paying any such person, firm or corporation so found to be owing the State, any sum or sums of money whatsoever, turn over to the State Dispensary Commission a sufficient sum of money, or so much as may be on hand, to pay the debt due the State, any balance remaining to be applicable to any just claim of such creditor against a County Dispensary. A receipt of the State Dispensary Commission shall be a sufficient voucher for the payment of any funds found to be due the State.

SEC. 4. That the State Dispensary Commission is hereby authorized and empowered to order any officer, or officers, in charge or custody of any fund or funds arising from the sale of the assets of any former County Dispensary, or of any assets belonging to any existing County Dispensary, to withhold payment of the same until the further order of the State Dispensary Commission, and any and all officers and persons whomsoever are forbidden upon the order of the State Dispensary Commission to pay out any such fund until so permitted by the said Commission.

SEC. 5. In case any person, firm or corporation shall fail or refuse when required by the State Dispensary Commission to produce any book, paper, document or witness, or shall refuse to submit to the authority or jurisdiction of the said State Dispensary Commission, such person, firm or corporation shall be deemed to have abandoned its claim or claims against all County Dispensaries, and the amount of such abandoned claim shall be turned over to the State Dispensary Commission as an asset of the State Dispensary: *Provided*, All persons, firms or corporations shall have not less than ten days' notice of any hearing of any and all claims, and shall have full opportunity to be heard in their own behalf: *Provided, further*, The Attorney General, or other attorney for the State, shall file with the State Dispensary Commission a statement showing the amount claimed to be due by each such person, firm or corporation, to the State, and a copy of such claim shall be mailed to the address of such person, firm or corporation not less than ten days before the date fixed for hearing thereon.

SEC. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all County Dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State.

SEC. 7. The State Dispensary Commission is hereby empowered to pass all orders and judgments and to do any and all things necessary to carry out the purpose of this Act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this State, and a transcript of said judgment shall be filed in the office of the Clerk of the Court of Common Pleas in each county where any property of such judgment debtor is situated.

SEC. 8. In all cases where any conflict may arise between the provisions of this Act and any other Act or Acts of the General Assembly concerning or regulating any of the matters covered by this Act, the provisions of this Act shall control.

SEC. 9. In all cases pending before the said State Dispensary Commission upon any claim or claims against any person or persons, or any corporation or corporations, owning any real estate in any county in this State, the said Commission shall file in the office of the Clerk of Court in each county where such real estate is situated a notice of the pendency of such cases and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon any such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State.

SEC. 10. This Act shall take effect immediately upon its approval by the Governor.

In the Senate-House, the 19th day of February, in the year of our Lord one thousand nine hundred and ten.

THOS. G. McLEOD,
President of the Senate.

RICHARD S. WHALEY,
Speaker of the House of Representatives.

Approved the 23d day of February, A. D. 1910.

M. F. ANSEL,
Governor.



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JAMES D. MAHER,
CLERK

Supreme Court of the United States

OCTOBER TERM, 1914

No. [REDACTED] 12

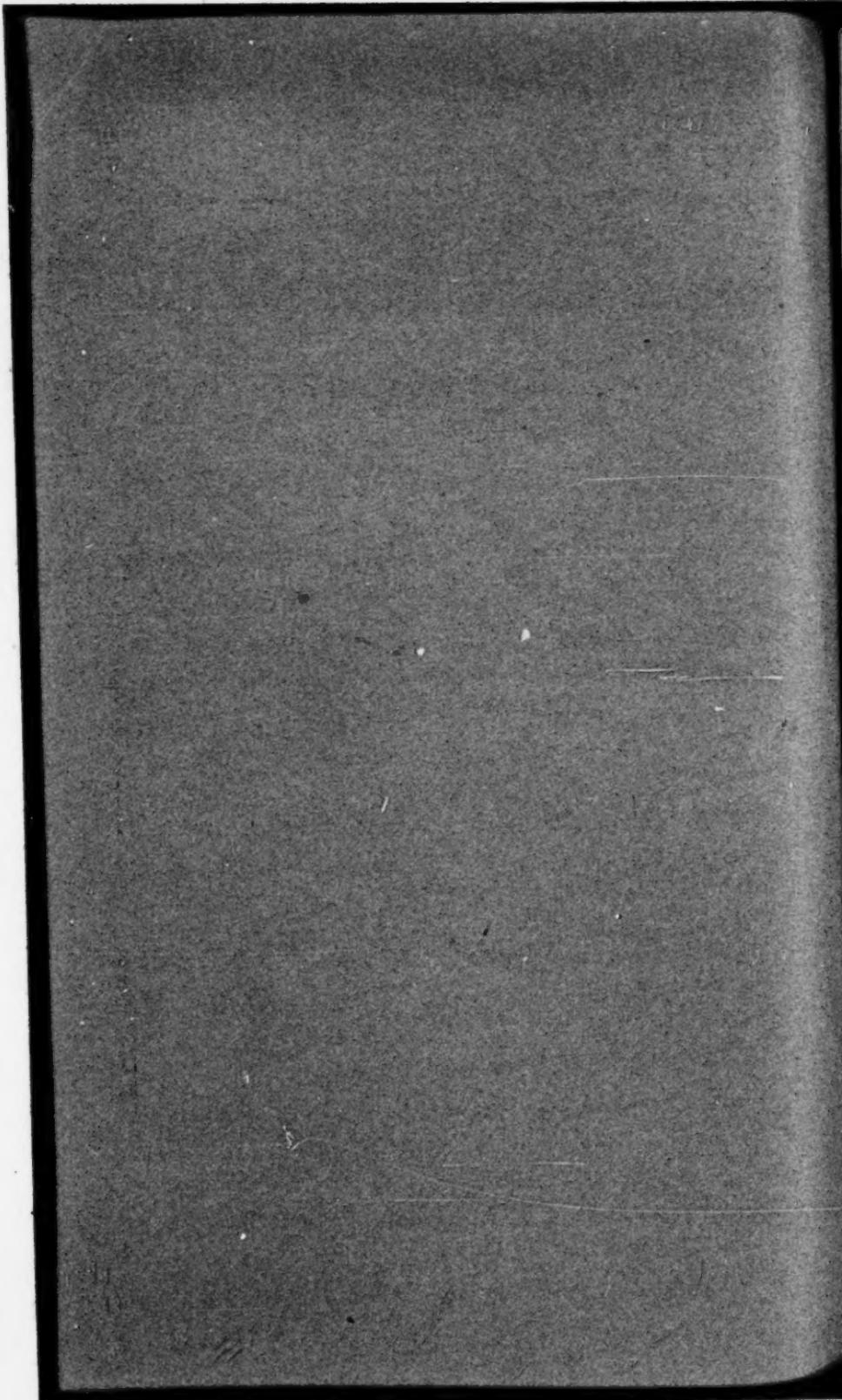
CAROLINA GLASS COMPANY, Plaintiff in Error,

vs.

THE STATE OF SOUTH CAROLINA.

In Error to the Supreme Court of the State of South Carolina.

APPOINTMENT OF THOMAS H. PEPPLE AND ROBERT LINCOLN MURKIN,
FOR THE STATE OF SOUTH CAROLINA.



Supreme Court of the United States

OCTOBER TERM, 1914

No. 85

CAROLINA GLASS COMPANY, *Plaintiff in Error*,

vs.

THE STATE OF SOUTH CAROLINA, *Defendant in Error*.

In Error to the Supreme Court of the State of South Carolina.

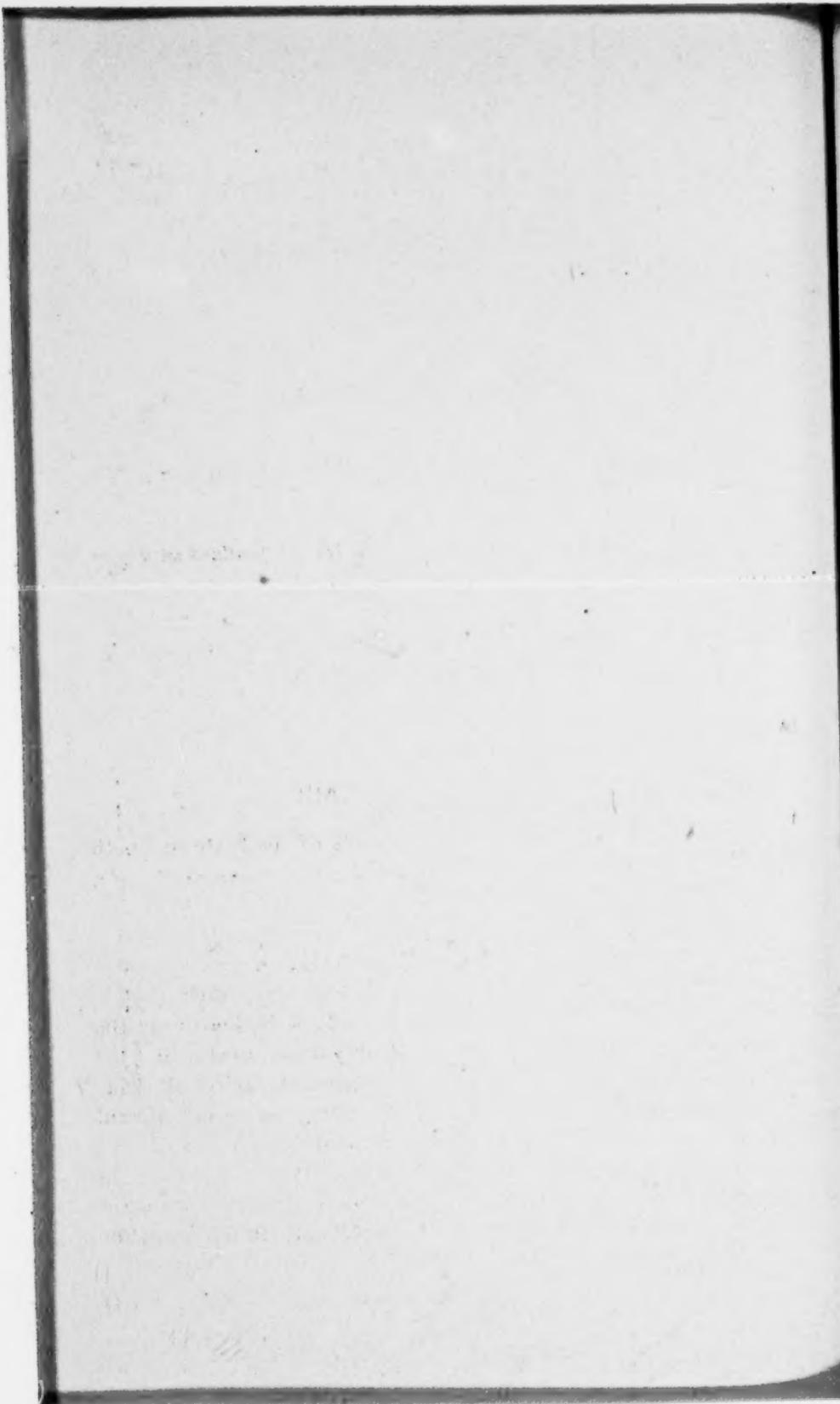
**ARGUMENT OF THOMAS H. PEEPLES AND BENJAMIN LINDSEY ABNEY,
FOR STATE OF SOUTH CAROLINA.**

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Supreme Court of the United States

OCTOBER TERM, 1914.

No. 85.

THE CAROLINA GLASS COMPANY, *Plaintiff in Error*,

vs.

THE STATE OF SOUTH CAROLINA, *Defendant in Error*.

Argument of Thomas H. Peeples and Benjamin Lindsey Abney,
for State of South Carolina.

STATEMENT OF CASE.

Under an Act of the General Assembly of the State of South Carolina, entitled "An Act to Provide for the Disposition of All Property Connected With the State Dispensary, and to Wind Up Its Affairs," approved the 16th of February, 1907 (XXV Stats., 835), and under another Act of said Assembly amending the aforesaid Act, approved the 24th of February, 1908 (XXV Stats., 1289), a Commission was created, to be known as the State Dispensary Commission, whose duty it was to close out the business and property of the State Dispensary, collect all debts due, and pay all just liabilities of the State growing out of said business. They had further full power and authority to investigate the past conduct of the affairs of the Dispensary, as also all the power and authority conferred upon a committee which had been appointed under a resolution to investigate the affairs of the State Dispensary (XXIV Stats., 1220).

By the amendatory Act referred to, the Commission was given full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary, and to pay for the State all just claims which had been submitted to and determined by it, and no other, out of the assets of the Dispensary which had or might thereafter be collected by the State Dispensary Commission. These statutes appear in an Appendix hereto. By a proviso to the amendatory Act, contained in Section 11 thereof, each and every person, firm or corporation presenting a claim or claims to said Commission should have the right to appeal to the Supreme Court, as in cases at law, and that notice of intention to appeal should be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court.

The plaintiff in error presented its claim for \$23,013.75, as a balance due it by the State for bottles, demijohns, etc., furnished to the Dispensary, under contracts made with the Board of Directors, from and including April, 1906, until its business was closed out by the Commission. A hearing upon said claim by the Commission was given to the plaintiff in error, which appeared by its officers and counsel, and witnesses and documentary evidence were submitted, each party cross-examining said witnesses, or the opportunity given. Tr. ff. 2, 3, pp. 1, 2; Judgment Tr. f. 19, p. 11.

After taking testimony from time to time for several days (which voluminous testimony is not made a part of this transcript), and after consideration and investigation of such claim, and of the past transactions of said company, the plaintiff in error, with the old State Dispensary, the Commission filed its conclusions or judgment with regard to said claim on November 17, 1909. This judgment is set out in the transcript at folios 19 to 25, pages 11 to 14.

The Commission held that the officers in control and management of the affairs of the plaintiff in error had entered into an illegal combination and agreement with the Board of Directors of the State Dispensary, whereby they had, between the years 1902

and until the early part of the year 1906, contrary to the provisions of the Dispensary Law and to the duties and obligations which the Directors owed to the State, charged the State exorbitant prices and in excess of what was legal and proper, and that such overcharges amounted to \$51,432.99, which should be offset against the claim in favor of said Carolina Glass Company, the plaintiff in error, to wit, its claim for \$23,013.75. Tr. f. 24, p. 14.

Further, that in its investigation, after deducting from said overcharges the amount of the claim filed by the plaintiff in error, the Commission found that the Carolina Glass Company was indebted to the State of South Carolina in the sum of \$28,419.24, and therefore the claim was held to be not a just liability of the State.

From this judgment the plaintiff in error appealed to the Supreme Court of the State, under the permission given by Section 11 of the Act of 1908. Such appeal was heard by the Supreme Court of South Carolina, and its opinion and judgment was rendered on the 29th of November, 1910 (Tr. ff. 40 to 53, pp 23 to 32), affirming the decision of the Commission upon the claim of plaintiff in error. This appeal was upon certain exceptions made to the decision of the Commission, which appear in the transcript at folios 26 to 39, pages 15 to 23.

This case is now brought by writ of error to this Court upon the assignments of error appearing in the transcript at folios 55 to 57, pages 32 to 34.

BRIEF OF ARGUMENT.

We submit that this Court has no jurisdiction to hear and determine this case upon this writ of error.

I.

The State of South Carolina, with regard to the claim of the plaintiff in error, could not be sued without its consent. The only consent that the State has given with regard to the presentation, proof and payment of said claim is contained in the Acts of 1907 and 1908, heretofore cited and appearing in full in the Appendix hereto.

Murray vs. Wilson Distilling Co., 213 U. S., 151.
Murray vs. State, ex rel. Ray, 213 U. S., 174.

The first Act, which was construed by this Court in the above case, gave no right of appeal. The second Act does, by Section 11 thereof, give such right of appeal, but it does not provide for any other or further trial of the case beyond its own Supreme Court. It has not consented that any other tribunal shall determine this question for it, or has waived its immunity from suit other than before its Commission and in its Supreme Court.

In the case of *Smith vs. Reeves*, 178 U. S., 436, this Court said :

"It is quite true the State has consented that its Treasurer may be sued by any party who insists that taxes have been illegally exacted from him under assessments made by the State Board of Equalization. But we think that it has not consented to be sued except in one of its own Courts. This is not expressly declared by the statute, but such, we think, is its meaning. The requirement that the aggrieved taxpayer shall give notice of his suit to the Comptroller, and the provision that the Treasurer may at the time he demurs or answers 'demand that the action be tried in the Superior Court of the county of Sacramento,' indicates that the State contemplated proceedings to be instituted and carried to a conclusion only in its own judicial tribunals. If a Circuit Court of the United States can take cognizance of an action of this character, the right given to the Treasurer by the local statute to have the case tried in the Superior Court of Sacramento county would be of no value; for, as the jurisdiction and authority of a Circuit Court of the United States depends upon the Constitution and laws of the United States, it could not refuse to take cognizance of the case if rightfully commenced in it, and to proceed to final decree, nor could it, merely in obedience to the laws of the State, transfer it to a State Court upon the demand of the State Treasurer. A Federal Court can neither take nor surrender jurisdiction except pursuant to the Constitution and laws of the United States."

It seems to us that, under the reasoning of this case, and the authorities there cited, this Court has no jurisdiction to entertain

this writ of error. The Legislature never intended that the question of claims against it of certain parties dealing with the old State Dispensary should be submitted to any other tribunal than the Commission to investigate and to determine, with a right of appeal as in cases of law from their decision to the Supreme Court of the State, and there to end.

In the State of South Carolina, in cases at law, the decisions of a jury or of tribunals at common law finding facts cannot be interferred with by the Supreme Court, as these findings are conclusive upon it if there is any testimony whatever to support them. Opinion of Supreme Court of State under review, Tr. f. 42, p. 24.

See, also, the cases of *Bolens vs. Wisconsin*, 231 U. S., 616, and *Chandler vs. Dix*, 194 U. S., 590.

In this connection the language used by this Court in *Murray vs. Wilson Distilling Co.*, 213 U. S., 151, 172, is, in our view, applicable:

"The absence in the winding up Act of a provision conferring authority to review in the ordinary Courts of justice the action of the Commission concerning claims, instead of supporting the contention that the State had abandoned all property right in the funds placed in the hands of the Commission, tends to a contrary conclusion, since it at once suggests the evident purpose of the State to confine the determination of the amount of its liability to claimants, to the officers or agents chosen by the State for that purpose. And it is elementary that, even if a State had consented to be sued in its own Courts by one of its creditors, a right would not exist in such creditor to sue the State in a Court of the United States. *Smith vs. Reeves*, 178 U. S., 436, and cases cited; *Chandler vs. Dix*, 194 U. S., 590. The situation, therefore, was not changed as a result of the Act of February 24, 1908, giving the creditors of the State, whose claims might be adversely acted upon by the Commission, the right to a review in the Supreme Court of the State."

We do not understand that the remarks of the Court in *Smith vs. Reeves, supra*, to wit:

"Nothing heretofore said by this Court justifies the contention that a State may not give its consent to be sued in its own

Courts by private persons or by corporations, in respect of any cause of action against it and at the same time exclude the jurisdiction of the Federal Courts—subject always to the condition, arising out of the supremacy of the Constitution of the United States and the laws made in pursuance thereof, that the final judgment of the highest Court of the State in any action brought against it with its consent may be reviewed or re-examined, as prescribed by the Act of Congress, if it denies to the plaintiff any right, title, privilege or immunity secured to him and specially claimed under the Constitution or laws of the United States," are in conflict with this latter expression of the Court. We understand from the language used that if in the suit which is permitted by the State against herself questions of Federal rights arise and are determined adversely by the Supreme Court of the State, a writ of error will lie to such Court from the Supreme Court of the United States, and there can be reviewed, but that this is far from meaning that, because a creditor may have certain rights to certain forms of procedure in the Federal Court inconsistent with the procedure which constitutes the conditions upon which the right to immunity has been waived by the State, such conditions of such consent must be considered as nonexistent.

The writ of error, therefore, should be dismissed.

II.

We submit that the assignments of error show that no Federal questions are involved.

The construction of these statutes has become settled law, both by the State Court (*State, ex rel. Lyon, Attorney General, vs. State Dispensary Commission*, 79 S. C., 316, and *Carolina Glass Co. vs. Dispensary Commission*, 87 S. C., 270), and by this Court (*Murray vs. Wilson Distilling Co.*, 213 U. S., 151), to the effect that the members of the Board of Directors of the State Dispensary were officers of the State and their contracts in purchasing supplies necessary in the operation of the State Dispensary were contracts of the State, and that parties so contracting with them were mere creditors of the State; that they

had no lien upon nor vested interest in any of the proceeds of sale, or any vested lien or trust whatever upon the moneys held by the State Dispensary, and that the statute creating the Commission to provide for examination and liquidation of claims against the State and to pay such claims out of the assets in their hands when liquidated, was a mere ordinary act of legislation providing how claims against the State may be proven.

Nor, it is submitted, can the power be doubted of the Legislature of the State to prescribe how claims against the State shall be presented, proven and paid, and the mode of such procedure be fixed by it. Nor does the amendatory Act alter in any way the questions heretofore settled in the case of *Murray vs. Wilson Distilling Co., supra*.

In view of this construction of the statutes and of the course of procedure by the Commission in the hearing and upon the presentation by the plaintiff in error, it is submitted that the plaintiff in error had not only every opportunity to make proof of its claim, but to meet the witnesses for the State before the Commission, to cross-examine them, to make reply in testimony, and to argue the case by its counsel.

(1) It is therefore submitted that the first assignment of error, which is made to the mode of procedure of the State Dispensary Commission in determining its claim and offsetting the same when duly allowed and approved by said Commission by a supposed claim of the State of South Carolina, on account of previous and other distinct and separate transactions between the claimant and the State, which was in violation of Section 1 of the Fourteenth Amendment, and Section 10 of Article I of the Constitution of the United States, and deprived the claimant of its property without due process of law and denied to it the equal protection of the law and trial by jury, is without any support whatever, and raises no material Federal question which has not already been decided and settled by this Court.

The assignment that it impaired the obligation of claimant's contract out of which the claim arose, it is submitted, is without any merit, for there was no legal obligation of the State which could be enforced against it, and only its moral obligation to pay a just claim and liability. Hence, there could be no legal and

enforceable obligation that could be impaired by the State in fixing and providing its own methods whereby it would pay its debts, and such contract was made in the light of the Constitution and the provisions of law as they stood when such contract was made.

(2) The second assignment of error is to the effect that the claimant had no notice in any way of any such claim or claims against claimant in favor of the State, by pleading or otherwise, and no opportunity to be heard thereon, and therefore the Supreme Court of the State erred in holding that it was not deprived of its property without due process of law and denied the equal protection of the law and its contract right impaired, in contravention of the Fourteenth Amendment and Article I, Section 10, of the Constitution of the United States.

The transcript fully shows that they not only had notice of the claim made by the State against it, but that they were advised from the beginning and throughout the entire proceedings that the State was insisting that they had no just liability against it, by reason of the illegal and fraudulent combination and agreement made between the operating officers of plaintiff in error and the members of the Board of Directors of the State Dispensary to make the State of South Carolina pay a larger sum than it would have otherwise done, and they were given full opportunity to reply thereto. See the opinion of the State Supreme Court, Tr. ff. 40-41, pp. 23-24.

(3) The third assignment is to the effect that the Supreme Court of the State should have held and decided that the action of the State Dispensary Commission in offsetting and denying the claimant's claim was in violation of Section 1 of the Fourteenth Amendment, and Section 10 of Article I of the Constitution of the United States, because the statute pursuant to which said claim was filed gave the Commission no jurisdiction to pass upon or determine claims of the State against claimant, because claimant had no notice of any such claim by pleading or otherwise, and no opportunity to be heard or present evidence or argument thereon, and was denied the right of trial by jury.

We have already noticed that the statutes creating the Commission expressly not only gave them the power, but imposed upon them the duty, in ascertaining what the just liabilities of the State were with regard to the claims presented, to make investigation into the past conduct of the officers of the State Dispensary as to the creation of these debts.

Section 8 of the Act is:

"Section 8. The said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission."

This section is commented upon in the opinion of this Court in *Murray vs. Wilson Distilling Co., supra*. There could be no other purpose in conferring this power and imposing this duty than to ascertain how the parties presenting these claims against the State had conducted themselves with respect to the Board of Directors, whose acts were under investigation.

We have already called attention to the fact that the claimant had notice of such claim of the State in the progress of the case, had submitted testimony with regard thereto, had cross-examined the witnesses for the plaintiff, and had every opportunity to discuss the same before the Commission.

(4) This assignment of error, which alleges that the Supreme Court of the State should have held that the claimant was deprived of its contract rights and property without due process of law and denied the equal protection of the law by the action of the Commission in receiving and considering evidence, over claimant's objection, concerning other claims of the State arising

out of other distinct and separate dealings between claimant and the State, as setoffs to deny the claimant's claim, when claimant had no notice or opportunity to be heard on such other claims, we submit is fully answered by the opinion of the Court itself.

Respectfully submitted,

THOMAS H. PEEPLES,
BENJAMIN LINDSEY ABNEY,
Attorneys for State of South Carolina.

October 29, 1914.

APPENDIX.

CONSTITUTIONAL PROVISIONS.

Article VIII, Section 11, Constitution 1895.

"In the exercise of the police power the General Assembly shall have the right to prohibit the manufacture and sale and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture and sell and retail alcoholic liquors or beverages within the State under such rules and restrictions as it deems proper; or the General Assembly may prohibit the manufacture and sale and retail of alcoholic liquors and beverages within the State, and may authorize and empower State, county and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities under such rules and regulations, as it deems expedient: *Provided*, That no license shall be granted to sell alcoholic beverages in less quantities than one-half pint, or to sell them between sundown and sunrise, or to sell them to be drunk on the premises: *And provided, further*, That the General Assembly shall not delegate to any municipal corporation the power to issue licenses to sell the same."

Article XI, Section 12, Constitution 1895.

"All the net income to be derived by the State from the sale or license for the sale of spirituous, malt, vinous and intoxicating liquors and beverages, not including so much thereof as is now or may hereafter be allowed by law to go to the counties and municipal corporations of the State, shall be applied annually in aid of the supplementary taxes provided for in the sixth section of this Article; and if after said application there should be a surplus, it shall be devoted to public school purposes, and apportioned as the General Assembly may determine: *Provided, however*, That the said supplementary taxes shall only be levied when the net income aforesaid from the sale or license for the sale of

alcoholic liquors or beverages are not sufficient to meet and equalize the deficiencies for which the said supplementary taxes are provided."

STATUTES.

(XXV Stats., 835.)

AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY CONNECTED WITH THE STATE DISPENSARY, AND TO WIND UP ITS AFFAIRS.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well-known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required in the sum of \$10,000.

SEC. 2. Said Commission shall immediately organize by the election of a Chairman and Secretary from their number.

SEC. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased; and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for

the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further,* That all payments shall be made in gold and silver coin of the United States, in United States currency, or in national bank notes.

SEC. 4. The compensation of each member of said Commission shall be \$5 per day for each day actually employed about the business, and actual expenses for the time engaged: *Provided,* That they shall receive no compensation for services rendered on this Commission after January 1, 1908.

SEC. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

SEC. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

SEC. 7. The said Commission shall submit to the Governor at the earliest day practicable a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of their actings and doings.

SEC. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to Investigate the Affairs of the Dispensary, as prescribed by an Act to Provide for the Investigation of the Dispensary, approved 24 January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided,* That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Approved the 16th day of February, A. D. 1907.

(XXV Stats., 1289.)

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY CONNECTED WITH THE STATE DISPENSARY AND TO WIND UP ITS AFFAIRS," SO AS TO PROVIDE COMPENSATION FOR MEMBERS OF THE SAID COMMISSION FOR THE YEAR 1908, AND TO PROVIDE FOR THE SALE OF THE REAL ESTATE HERETOFORE USED IN CONDUCTING THE DISPENSARY, AND TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS OF THE STATE DISPENSARY.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That an Act entitled "An Act to provide for the disposition of all property connected with the State Dispensary and to wind up its affairs," approved the 16th day of February, 1907, be, and the same is hereby, amended by striking out the figure 8 at the end of Section 4, and inserting in lieu thereof the figure 9, and by adding at the end of said section the following: "That in addition to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty (\$150.00) dollars." *Provided, further,* That the per diem provided for herein shall begin on the date of the approval of this Act.

SEC. 2. That said Act be further amended by adding at the end thereof the following, as Section 9: "Section 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required upon being notified by the State Dispensary Commission, that the real estate heretofore used for the offices and warerooms, the typewriters, adding machines, files, metal, and other furniture in the offices and warerooms, etc., of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell same under and pursuant to the terms of Section 91, Code of Laws of South Carolina, Vol. I, 1902: *Provided,* That the said property shall not be sold for less than seventy-five thousand (\$75,000.00) dollars, and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same: *Provided, further,* That the

typewriters, adding machines, files, metal, and other furniture may be transferred by the Commissioners of the Sinking Fund to any of the State offices that, in the judgment of the Commissioners, may need them."

SEC. 3. That said Act be further amended by adding the following as Section 10: "Section 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland county against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary."

SEC. 4. That said Act be further amended by adding the following as Section 11: "Section 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary, and to pay for the State any and all just claims, which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have been, or may hereafter be, collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court," so that said Act, when so amended, shall read as follows:

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required, in the sum of \$10,000.00.

Sec. 2. Said Commission shall immediately organize by the election of a Chairman and Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State, except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further*, That all payments shall be made in gold and silver coin of the United States currency or in national bank notes.

Sec. 4. The compensation of each member of said Commission shall be five (\$5.00) dollars per day for each day actually employed about the business and actual expenses for the time engaged: *Provided*, That they shall receive no compensation for services rendered on this Commission after January 1, 1909: *Provided, further*, That in addition to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty (\$150.00) dollars: *Provided, further*, That the per diem provided for herein shall begin on the date of the approval of this Act.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants, and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor, at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of all their actings and doings.

Sec. 8. The said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary and all the power and authority conferred upon the Committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Sec. 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required, upon being notified by the State Dispensary Commission, that the real estate heretofore used for the offices and warerooms, etc., of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell the same under and pursuant to the terms of Section 91, Code of Laws of South Carolina, Vol. I, 1902: *Provided*, That the said property shall not be sold for less than seventy-five thousand (\$75,000.00) dollars, and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same.

Sec. 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland county against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by

them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary.

Sec. 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary. And to pay for the State any and all just claims which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have or may hereafter be collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court, as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court.

Sec. 12. That no funds arising from the sale of the assets of the former State Dispensary, or from the collection of debts due the said Dispensary, or moneys delivered by the State Treasury to said Commission shall be paid out for any purpose or to any person whatsoever, except upon the check of the Chairman of said Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such checks as may be presented by the Chairman of said Commission only upon presentation of the same, together with a certificate of said Commission or a majority thereof, which certificate shall show: that the said check is issued in payment of some expense provided for by statute, or necessarily incident to closing up the affairs of the Dispensary, or for services rendered said Commission in closing up the affairs of said Dispensary, or contracted for in accordance with law by said State Dispensary Commission, or that it is in payment of a claim of a creditor which has been adjudged by said Commission to be due, and upon such adjudication ordered paid.

In the Senate-House the 21st day of February, in the year of
our Lord one thousand nine hundred and eight.

THOS. G. MCLEOD,
President of the Senate.

RICHARD S. WHALEY,
Speaker of the House of Representatives.

Approved the 24th day of February, A. D. 1908.

M. F. ANSEL,

Governor.

CAROLINA GLASS COMPANY *v.* STATE OF SOUTH
CAROLINA.

SAME *v.* MURRAY ET AL., CONSTITUTING THE
STATE DISPENSARY COMMISSION OF SOUTH
CAROLINA.

ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH
CAROLINA.

SAME *v.* MURRAY.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF SOUTH CAROLINA.

SAME *v.* MURRAY.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH
CIRCUIT.

Nos. 12, 9, 205, 204. Argued January 20, 1916.—Decided February 21,
1916.

A glass manufacturing company, which had furnished supplies to the State and various county dispensaries of South Carolina, presented, pursuant to statute providing therefor, its claim for balance due to the State Dispensary Commission appointed to close up the business

and which found that the glass company had been overpaid on previous settlements an amount exceeding its claim; and, after allowing the claim, found the glass company was indebted to the State for a specified amount, and entered an overjudgment therefor which the State attempted to collect; the glass company appealed to the state Supreme Court, and also instituted independent proceedings in the state and Federal courts to restrain the members of the Commission from enforcing the overjudgment or from withdrawing funds from the county dispensaries and to recover sums so withdrawn against the individual members of the Commission. From the adverse judgment of the District Court, writs of error were taken from this court and also from the Circuit Court of Appeals. All the cases were considered together by this court, and *held* that;

The State Dispensary Commission had jurisdiction to consider, find and offset claims of the State against one claiming for supplies furnished to the dispensaries; and, even though it had no power to render an overjudgment, it did not deprive the claimant of its property without due process of law by making such offset.

The state court did not err in holding that although the overjudgment was rendered without authority by the Commission, that fact did not affect the power of the Commission to withdraw funds from the county dispensaries as they were state funds and subject to its control.

The glass company, as creditor of the State, could not assert rights against the withdrawal by state officers of funds of the State under their control in regard to which the State had not consented to be sued; and the withdrawal in this case did not amount to the impairment of contract obligations within the meaning of § 10, Art. I, of the Federal Constitution.

The funds of the State Dispensary of South Carolina involved in these actions were funds of the State (*Murray v. Wilson Distilling Co.*, 213 U. S. 151) and the suit against members of the State Dispensary Commission was in effect a suit against the State and could not be maintained in the District Court of the United States.

Where there are no allegations of diverse citizenship and the jurisdiction of the Federal court is invoked solely on constitutional grounds, the writ of error issues direct from this Court and the Circuit Court of Appeals is without jurisdiction to review.

87 S. Car. 270, 285, affirmed.

197 Fed. Rep. 392, affirmed.

Writ of error to review 206 Fed. Rep. 635, dismissed.

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Opinion of the Court.

THE facts, which involve the construction of the Dispensary Laws of South Carolina and rights of one claiming to have furnished supplies to the dispensaries, are stated in the opinion.

Mr. William H. Lyles, with whom *Mr. David W. Robinson* and *Mr. Jo-Berry S. Lyles* were on the brief, for plaintiff in error.

Mr. Benjamin Lindsey Abney, with whom *Mr. Thomas H. Peeples* was on the brief, for defendants in error.

MR. JUSTICE McREYNOLDS delivered the opinion of the court.

These suits grew out of the legislation by which South Carolina sought to control traffic in liquors. They involve closely related matters, were heard together, and it will be convenient likewise to dispose of them. In *Scott v. Donald*, 165 U. S. 58; *Vance v. Vandercook*, 170 U. S. 438, and *Murray v. Wilson Distilling Co.*, 213 U. S. 151, the history and general purposes of the legislation are considered.

By act of 1892 the General Assembly created a State Board of Control, with power to supervise the traffic; also provided for a State Commissioner charged with the duty of purchasing and distributing liquors through local officers known as dispensers.

The statute of 1896 directed election, by the General Assembly, of the Board of Control and gave it power to make purchases and to appoint a Commissioner who should supply local dispensers selected by and under direction of County Boards. By an amending act of 1900 the Board then existing was abolished; a Board of Directors of the State Dispensary was created, with power to prescribe rules and regulations to govern dispensaries,

both State and County; and provision was made for the election of a Dispensary Commissioner. The new Board was required to purchase liquor for lawful use within the State; and general management and control of the State Dispensary was entrusted to the Commissioner.

A legislative committee was appointed in 1905 to investigate the State Dispensary. In 1907 the statute of 1896 was repealed; control through a state board was abolished and county boards substituted, clothed with authority to purchase "in the name of this State" all liquors to be sold within their several counties, "*Provided*, That the State shall not be liable upon any contract for the purchase thereof beyond actual assets of the Dispensary for which the purchase is made." At the same time another act created a State Dispensary Commission of five, gave it control of all funds, assets and property other than real estate of the State Dispensary, required it to investigate all facts concerning outstanding claims against the State Dispensary and, thereafter, to pay all just liabilities from dispensary assets which might come into its hands. This second act of 1907 was amended in 1908, and the Commission given "full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary; and to pay for the State any and all just claims, which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have been or may hereafter be collected by said Dispensary Commission: *Provided*, That each and every person, firm or corporation, presenting a claim or claims to said Commission, shall have the right to appeal to the Supreme Court, as in cases at law."

By act of February 23, 1910, findings of the State Dispensary Commission were declared to be final; any sum ascertained to be due the State was required to be deducted from whatever a county dispensary might owe such debtor; and authority was given the Commission to

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Opinion of the Court.

command any county dispensary so indebted to turn over to it an equivalent amount of money. Notices of claims in favor of the State, creation of liens to secure the same, and enforcement of their payment were also provided for.

NUMBER 12.

The history and disposition of this cause in the state tribunals sufficiently appear from parts of the opinion by the Supreme Court (87 S. Car. 270) quoted below, p. 279:

"The investigations of the committee [appointed 1905] resulted in an act, passed in 1907, authorizing the appointment of a commission, to be known as the State Dispensary Commission, whose duty it was to close out the entire business and property of the State Dispensary, collect all debts due, and pay 'all just liabilities' of the State growing out of said business. The Commission was given 'full power and authority to investigate the past conduct of the affairs of the dispensary.' It was also clothed with all the power and authority conferred upon the Committee, which had been appointed under the resolution above referred to. 25 Stat. [So. Car.] 835. The act of 1907 was amended in 1908 so as to give the Commission 'full power to pass upon, fix and determine all claims against the State growing out of dealings with the dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it, and no other.' 25 Stat. 1289.

"Appellant presented to the Commission a claim for \$23,013.75 as the balance due it by the State for bottles and demijohns furnished to the dispensary under contracts made with the board of directors from and including April, 1906, until the business was closed out by the Commission. Appellant had also furnished the dispensary practically all the bottles and demijohns used since about December, 1902; but all accounts prior to April, 1906, had been settled.

"Upon the filing of this claim, the Commission went into an investigation of all past dealings of appellant with the dispensary; and, after hearing a great deal of testimony and argument thereon, rendered its decision, dated Nov. 17, 1909, which will be set out in the report of the case.

"The conclusion and finding of the Commission was that, in pursuance of a conspiracy between some of the directors of the dispensary and some of appellant's officers or agents to defraud the State whereby legitimate competition was destroyed, appellant had a monopoly of the business of furnishing glass to the dispensary from the date of its beginning business, in 1902, until April, 1906; and that the prices paid it for glass during that period exceeded the fair market value thereof by \$51,432.99. Therefore, allowing appellant's claim of \$23,013.75, the Commission found that appellant was indebted to the State in the sum of \$28,419.24, the difference between the amount of its claim and the sum it had fraudulently collected from the State.

"From that decision, this appeal was taken, under the provisions of the statute, giving every claimant the right of appeal to the Supreme Court, 'as in cases at law.' Appellant concedes that the jurisdiction of this court is limited in such cases to a review of alleged errors of law.

* * * * *

"The next contention of appellant is that the Commission is not a court, but a special tribunal of limited power, and that it exceeded its authority in undertaking to fix and determine appellant's liability to the State, and then set off its claim against the liability so fixed. It is conceded that the Commission is not a court, though its duties necessarily involve, to some extent, the exercise of judicial functions, as is always the case where judgment and discretion are to be exercised. It was created under Section 2 of Article 17 of the constitution, which provides

that 'the general assembly may direct by law in what manner claims against the State may be established and adjusted.'

* * * * *

"The question, therefore, whether the Commission had authority to entertain a 'set-off' or 'counter claim' in favor of the State against a claimant, in the technical sense in which those terms are used in legal proceedings is not germane or material to the present inquiry. To what purpose should the Commission investigate, unless it announced the result of its investigation? We see no error, therefore, in the Commission stating its findings as the result of its investigation.

"The findings of the Commission, however, are controlling only in its determination of the non-liability of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper court to recover the amount found by the Commission to be due it by appellant.

* * * * *

"The judgment of this court is that the decision of the Commission upon plaintiff's claim against the State be affirmed, . . ."

Manifestly, we think, the Supreme Court affirmed the Commission's action only in so far as it declined to approve the glass company's claim—there was no final determination of the State's right to recover over against the company.

Error is assigned concerning supposed Federal questions upon the theory that there has been "in practical effect an adjudication of the validity of the alleged claim of the State arising out of the ended transactions prior to April, 1906, and a satisfaction of such a judgment by the confiscation of plaintiff in error's property; that is, its claim against the State for goods furnished since 1906."

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This theory is entirely out of harmony with the Supreme Court's opinion, which holds the validity of possible demands against the glass company remains wholly undetermined and that, acting within its plain powers, the State had only refused to recognize and discharge a claim against itself. The argument of counsel proceeds upon a fundamental misconception. We find no error in the judgment below, and it must be affirmed.

NUMBER 9.

By this original proceeding begun in the Supreme Court of South Carolina, March 4, 1910, the Carolina Glass Company sought to restrain any effort to collect the so-called overjudgment for \$28,419.24 pronounced by the Dispensary Commission under circumstances narrated *supra* (cause No. 12); and also to prevent the Commission from demanding or receiving sums of money alleged to be due the company from certain county dispensaries or interfering with payment of such indebtedness.

Quotations from the opinion below (87 S. Car. 270, 285) will adequately disclose the issues involved.

"These arise principally out of an act approved February 23, 1910, and what was done by the defendants under the provisions of that act, which, it will be noted, was passed subsequent to the decision of the Commission upon the claim of the plaintiff. The provisions of the first five sections of the act pertinent to this case are, in substance: That, in addition to the powers conferred by all previous acts, the Dispensary Commission shall have power to pass upon, fix and determine claims of the State against any person, firm or corporation heretofore doing business with the State Dispensary, and settle and receipt therefor; that the findings of the Commission under its provisions shall be final, and, upon the finding by the Commission that any person, firm or corporation is indebted to the State, the dispensary auditor and officials

having charge of the funds of any county dispensary which may be indebted to such person, firm or corporation, shall pay to the Commission the amount so found to be due the State, or so much thereof as the funds in their hands due to such person, firm or corporation will pay, and the receipt of the Commission shall be a sufficient voucher therefor; that the Commission may, by its order, stop the paying out of any funds of any county dispensary by any officer having charge thereof. Sections 7 and 9 of the act are as follows: [They are copied in margin.]¹

"Within a few days after the approval of the act, to wit, on February 26, 1910, the Commission, by its attorneys, filed in the office of the clerk of the Court for Richland county, in which county plaintiff owned real estate, a notice, headed or entitled, *The State v. Carolina Glass Co.*, and signed by the Attorney General and other counsel

¹ SEC. 7. "The State Dispensary Commission is hereby empowered to pass all orders and judgments and do any and all things necessary to carry out the purposes of this act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this State, and a transcript of said judgment shall be filed in the office of the clerk of the Court of Common Pleas in each county where any property of such judgment debtor is situated."

SEC. 9. "In all cases pending before the said State Dispensary Commission, upon any claim or claims against any person or persons or any corporation or corporations owning any real estate in any county in this State, the said Commission shall file in the office of the clerk of court in each county where such real estate is situated a notice of the pendency of such cases, and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State."

representing the State. The notice was as follows: 'Notice is hereby given to all whom it may concern, that the above stated cause has been instituted, and is now pending before the State Dispensary Commission for the recovery against the Carolina Glass Company of \$29,000.00, the amount which has been found to be due from the said defendant to the State of South Carolina owing to overcharges made by said defendant in selling goods to the State Dispensary, and this notice is given in accordance with the terms of an act of the legislature passed in February, 1910, and duly approved by the Governor.' About the same time, notice was served on the plaintiff, pursuant to the provisions of the act, that the Commission would proceed to pass upon, fix and determine the claim of the State against the plaintiff on account of the overcharges growing out of its dealings with the dispensary. Notice was also served on the County Dispensary Board of Richland county, requiring that board to pay to the Commission the amount due by said board to the plaintiff.

"Another feature of the case grows out of an agreement alleged to have been made between the attorneys for the plaintiff and the attorney representing the State with regard to payments for shipments of glass made by plaintiff to the county dispensaries after November 20, 1909.

* * * * *

"Under the provisions of the Constitution (Art. VIII, Sec. 11) and statutes (25 Stat. 463) the county dispensaries are conducted 'under the authority and in the name of the State.' Therefore, the officers in charge of them are agents of the State and the funds arising from the sale of liquors through them are the funds of the State, and the debts due for goods sold to them are the debts of the State. In exercising the powers conferred upon it by the legislature, the Dispensary Commission is also the agent and representative of the State, 'subject to no interference,

except that of the General Assembly itself,' and a suit brought against it is, in effect, a suit against the State. *State v. Dispensary Commission*, 79 S. Car. 316, 329, 60 S. E. Rep. 928. As the State cannot be sued without its consent, no court has power to interfere with or direct the disposition of the State's funds in the hands of its agents, unless it appears that they are acting without authority of law, or are refusing to recognize and obey the law to the detriment of private rights. . . . In ordering the funds in the hands of the officers of the county dispensaries due to the plaintiff turned over to itself, the Commission acted within the limits of its authority and discretion conferred upon it by the legislature, and this court has no power to interfere. From the foregoing, it will be seen that it is unnecessary to inquire or decide whether there was an agreement between the attorneys for plaintiff and the attorneys for the State as to the collection of the amounts due plaintiff from the county dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it has been violated. The Dispensary Commission is the sole arbiter of the rights of the plaintiff, if it has any, with regard to that matter.

* * * * *

"So long, therefore, as the action of the Commission was confined to the investigation of all dealings, past and present, with the dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the Constitution for the legislature to provide by law how claims of the State against others shall be established or adjusted, except through the courts. We conclude, therefore, that in so far as the act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff, it is unconstitu-

tional, null and void. And, as the lien which the act attempts to create is based upon the unauthorized act of the Commission, it is likewise null and void."

Defendants were accordingly enjoined from asserting a lien upon the company's property and the notice filed in Richland County was directed to be cancelled; but the Commission's power to remove funds from county dispensaries was upheld.

Plaintiff in error now maintains the so-called overjudgment of November 17, 1909, was void; that by reason of claims against them it had contract and property rights in money held by the county dispensaries; and that removal of funds therefrom by the State Dispensary Commission impaired contract obligations in violation of § 10, Article I, Federal Constitution, and deprived it of property without due process of law.

It was distinctly adjudged by the Supreme Court that the Dispensary Commission was without power to pronounce the overjudgment; that it was invalid and could not be enforced. In view of repeated holdings by that court and our opinion in *Murray v. Wilson Distilling Co.*, 213 U. S. 151, it is clear that funds of county dispensaries were state funds, and, as such, subject to control by the Dispensary Commission. Their removal, therefore, violated no right which the glass company could assert—the State had not consented to be sued. The judgment of the court below must be affirmed.

NUMBER 205.

The Carolina Glass Company instituted this proceeding at law in the United States District Court, South Carolina, December 13, 1911, to recover judgment against individual members of the Dispensary Commission for sums of money said to have been unlawfully withdrawn by them from county dispensaries which held the same for plaintiff's benefit. It is alleged that for supplies furnished partly be-

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fore and partly after February 23, 1910, these county dispensaries became lawfully indebted to the company for more than \$19,000, and that the money in their keeping was held in trust to pay such sum, and further:

"That the said defendants, undertaking to proceed under section 6 of the Act entitled 'An Act to further provide for winding up the affairs of the State Dispensary,' approved the 23d day of February 1910, [copied in margin]¹ as this plaintiff is informed and believes, demanded from the County Dispensary Boards for the County of Clarendon, the County of Richland and the County of Georgetown, the sums of money alleged in paragraph six of this complaint, amounting in the aggregate to the sum of nineteen thousand and eighty-four and 38/100 dollars then due to this plaintiff by said several County Dispensary Boards, as alleged in said paragraph six, and unlawfully and wrongfully received the said sums of money from said several County Dispensary Boards, claiming that they were entitled to the same on account of the above mentioned illegal offset found by said State Dispensary Commission to be due by this plaintiff as aforesaid; which action this plaintiff alleges was wholly without authority of law, as the provisions of said section 6 of the Act of February 23d, 1910, were unconstitutional, null and void, as constituting an effort, unwarrantably and without authority, to confiscate the property of this plaintiff without due process of law, the provisions of said section being

¹ SEC. 6. "In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing, and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all County Dispensaries heretofore existing, shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State."

in violation of section 10 of Article I of the Constitution of the United States, and also of the Fourteenth Amendment to the Constitution of the United States; and, furthermore, in violation of the express contract and agreement entered into by this plaintiff with the defendants above named as above alleged."

Holding it in effect a suit against the State, the District Court dismissed the cause (197 Fed. Rep. 392); and it is here upon direct writ of error. We are of opinion that the action of the court below was correct. And in view of what has been said above and our opinion in *Murray v. Wilson Distilling Co.*, further discussion of the questions involved would not be profitable. The judgment is affirmed.

NUMBER 204.

This writ brings up a judgment rendered by the Circuit Court of Appeals, Fourth Circuit, affirming the same final judgment of the District Court considered in No. 205, *supra*. 206 Fed. Rep. 635. There is no allegation of diverse citizenship and the trial court's jurisdiction was invoked solely upon the ground that the controversy involved application of the Federal Constitution.

In such circumstances the Circuit Court of Appeals is without jurisdiction to review. *Union & Planters' Bank v. Memphis*, 189 U. S. 71, 73. Its judgment is accordingly reversed and the cause remanded with directions to dismiss the writ of error improperly entertained.

Judgments in Nos. 12, 9 and 205, affirmed; judgment in No. 204 reversed and remanded to the Circuit Court of Appeals for the Fourth Circuit with directions to dismiss writ of error for want of jurisdiction.